

Roger Traylen
1669.

THE
GRAND QUESTION
Concerning the
JUDICATURE
Of the
HOUSE of PEERS,
Stated and Argued.

And the Case of THOMAS SKINNER
Merchant, complaining of the *East
India Company*, with the proceed-
ings thereupon, which gave occasi-
on to that Question, faithfully related.

By a true Well-wisher to the Peace and good
Government of the Kingdom, and to the
Dignity and Authority of *Parliament*.

by Decretal Lord Hollis who dyed Feb. 17. 1679

*Judicium Dominorum Spiritualium & Temporalium
est Secundum Usum & Consuetudinem Parlamenti.*

Usus & Consuetudo Parlamenti est Lex Parlamenti.

Lex Parlamenti est Lex Angliæ,

Lex Angliæ est Lex Terræ,

Lex Terræ est Secundum Magnam Chartam :

*Ergo, Judicium Dominorum Spiritualium & Tem-
poralium est secundum Magnam Chartam.*

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Robert Taylor
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Case K 0451.414

(1)

THE

JURISDICTION

OF THE

House of Peers

ASSERTED:

THe Power of the House of Peers in Point of their Judicature having been lately called in question, upon occasion of a judgement given by them in a particular Case, which they conceived not tryable elsewhere in the Ordinary Course of Law; It will not be amiss, for the removing of all prejudice out of mens minds, to make a clear Narrative of the matter of Fact, with some Observations upon it, and the Additions of some Presidents and Arguments: Such may serve to evince and set forth the

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ancient

ancient way of Proceeding in that House as to their Judicial Capacity; even the same which they have continued to practice in succeeding times, and so leave it to the Judgement and conscience of every unbiassed indifferent man, to satisfie himself, If now there hath been any Innovation, any new In-
 croachment of Power, any Variation from the constant usage and Priviledge of the Peerage in all times, Ancient and Moderne. The business was sincerely thus.

Soon after his Majesties happy Restauration, one *Thomas Skinner* preferred a Petition to him in Council, purporting great Oppressions and Spoils Sustained by him in the Indies from the *East-India Company*, robbing him of a Ship, and goods of a great value, dispossessing him of a Plantation he had there, a dwelling House & Ware-House at *Iamby*, and an Island called *Barella* (which he had bought of that King) assaulting his person to the danger of his life and several other Injuries done him; For which he prayed the Kings Justice, to appoint a Court, Constable and Marshall

shall to Heare and Determine these matters, they not being otherwise Determinable by the ordinary Course of Law, or to put it into any other way for Just Relief. After some years Attendance and Sollicitation and several Petitions of this poor mans, the King at last refers it to certain Lords viz. The Lord Arch-Bishop of Canterbury, the Lord Chancellor, the Lord Privy Seal and the Lord Ashley, to call all Parties before them, and compose the matter if they could; The Order of Reference runs thus.

Whereas upon the Petition of Thomas Skinner Merchant, Setting forth his Sufferings under the barbarous oppressions of the East-India Company, His Majesty was Graciously pleased by Order of the 27. of August last, to deferre the clearing of the matter for erecting a Court to determine affaires of this nature till the second meeting of this Board at White-Hall, and in regard the said Company have Slighted the Orders of this Board, and not complied with any References or Mediations, designing to weare out the Petitioners Life in tedious Attendances; He did by his

The Jurisdiction of the
Petition this day read at the Board, humbly
pray that the said Court may be now Erected,
to relieve the Petitioner according to Justice
& put a Period to his grievances; Whereupon
his Majestie present in Council did Order.
That his Grace the Lord Arch-Bishop of
Canterbury, the Lord Chancellor, Lord
Privy Seal, and the Lord Ashley do send
for the Governor and some of the Members
of the East-India Company, to treat with
them, and to induce them to give the said
Mr. Skinner such reasonable satisfaction;
as may in some measure be answerable to the
loss and damage he hath suffered under
them.

Signed John Nicholas.

These Lords Referrees met, took
much pains in it, spent several dayes;
Ordered Mr. Ayloff of Counsel with
Skinner to give them under his Hand a
true State of the business, whose report
I will here set down in *Terminis*.

The

The Case of Thomas Skinner Merchant
and his demands against the East-
India Company for damages done
him in the year 1659. in India.

IN the year 1657. was a general Li-
berty of Trade into the East-Indies ;
Then Thomas Skinner furnished and set
forth his Ship called the Thomas from
London on a trading voyage to the Indies,
and arrived there, in 1658.

The Company by their Letters the 7th. Maij
1658, which arrived in India in No-
vember following, commanded their A-
gents to Seize all ships and goods of Eng-
lish trading there, and dispose half to the
Common-wealth, and half to the Com-
pany.

The Agents of Bantam direct those
of Jamby to seize the Estate of Freder-
rick Skinner in the hands of Thomas ;
saying, Thomas had nothing there of
his own ; and that Thomas Leaver Chief
of Jamby, should secure in his hands
what Estate he had of Fredericks, for
a Debt suggested owing by him to the
Company ;

6 The Jurisdiction of the

Company; upon which pretences they seized Thomas Skinners Ship and Goods, brake open his Ware House, assaulted him in his House, and dispossessed him of his Island Barrells; for which Injuries he hopes satisfaction, and therefore in particular demands,

For 128 Peculls of Pepper, 1 Ryalls

24 Peculls of Nutmegs; and for

Bread, strong Waters, and other

Provisions and Merchandizes,

valued one of his Ship by the A 3355

gents of Jamby and the Crew of

the Ship Dragon, then in the

Company's service.

The Company agree the Value 3160

Ryalls brought to their Account, but it

being proved, That the rest was laden on

Board Skinners Ship, this imbezlement

on subdaction by the Agents is just to lie

upon the Company.

For his Ship and Furniture, } Ryals.
 sworn by two Witnesses to be }
 worth, when set out, five or } 8000.
 six and twenty thousand pounds }
 sterling, and that she was worth as }
 much or more in India when ta- }
 ken, yet abate a fifth for ware and }
 tare rests, }

For eleven small Copper Ord- }
 nances, and their Field Car- }
 riages, 350 Ryals, and two } 9430.
 Quoyles of Ropes 80 Ryals, in }
 all, }

B 4

For 10

For 10 Barrels of English Powder, at 25 Ryals per Barrel, and Sword Blades, Spectacles, Prospective Glasses, Boxes, Knives, Cissors, and other small Merchandizes, Iron Works, Nails, Pistols, Pictures, & Looking Glasses with Ebony Frames on board, & Ship-planks, and other wood on shore, and in the Ware-House, valued by Marmaduke Grimston, and Peter deBarrier Purser of the Ship at

Ryals.

1730.

For Moneys owing by Thomas Leaver to Frederick Skinner assigned to Thomas, and accepted by Leaver with promise to pay, but detained by Order of the Company, who have in their hands a greater Summe of Leavers to indemnifie them against this Demand.

1521.

For

House of Peers Asserted.

For his Charges at Jamby Ryalls.
six Moneths under that trouble,
and coming home over Land
from India 19 Moneths travel; > 1800.
the Companies Agents refusing
to give him passage in their
Ships,

Total 16836 Ryalls:

Interest for 16836 Ryalls for six years.

Ryals are valued at Jamby 5 s. per
Ryal: But what they produce here, being
brought over in black Pepper to the Com-
pany clear of all Charges, is expected, they
will ingenuously own.

For { The Assault of his Person,
Loss of six years Time,
Disappointment of his Trade,
Attendance and Charge here,
Disseizin of his Island.

Being valuable at more than all the
other particulars, are humbly submitted
to your Lordships Discretion.

Signed Joseph Ayloff.

The

The Lords Referrees to this requiring the Answer of the Company, receive this as follows.

To the Right Honourable the Lords Referrees, concerning the Demands of Thomas Skinner upon the East India Company.

IN obedience to your Lordships Order and Direction, the Court of Committees of the said Company have considered of the Matter proposed by your Lordships, and do humbly offer to your Lordships; That for the Nutmegs, white Pepper, and other things, which were seized by the Justice of the place in part of a Debt due to the Company from Frederick Skinner, which said Goods were brought to the Companies Accompts, though the same were afterwards lost in the Ship Dragon; and in the regard the Accompts between the Company and Frederick are concluded, and the said Goods not included therein; the said Company have alwaies offered to pay for the said Goods, and are now ready to pay 3160 Dollars for the same, which at 4s. 9. d. per

per Dollar, amounts unto the summe of 750 l. 10 s. And concerning the 152 l. Dollars demanded by Thomas Skinner, as a Debt due unto him from Thomas Leaver; they in compliance with your Lordships desires will be ready and willing to pay the said fifteen hundred twenty one Dollars, amounting to 361 l. 4 s. 9 d. to the said Thomas Skinner, so as they may be discharged by the Administrator of the said Thomas Leaver, to whom only they are liable, it being very reasonable that the Company pay the Debt but once. But the Company do utterly disavow, that the Company can by any Law or Equity be liable for their Factors Debts.

Concerning Skinners other Demands for his Ship and for other Goods pretended to be seized on shore; The Company do humbly offer to your Lordships; That the Company are not liable for the Debt or Action of their Factors, unless done by their Order; and if the Company should be liable to every ones Clamors, and pretences for wrongs done, or pretended to be done by their Factors (when if any such thing were done, the same was not by their Order

der or Knowledge, nor appliable to their use and accompt) the same will necessarily impoverish and ruine the Company: And the Company gave no Order for the seizure of Thomas Skinners ship, nor nothing else of his; nor was the same brought to the Companies accompt, and the Agents at Bantam expressly ordered the Factors at Jamby not to meddle with the said Thomas Skinners ship, who acted accordingly: For it appears clearly, That Captain Allnut and his Mariners had his Provisions and Stores for their Wages, and that the King of Jamby and Jehore seized and kept the ship; And his Goods on shore were seized on by Chineses, and other his Creditors; and therefore they hope that his continual clamours of oppression shall not take any Impression in your Lordships great Judgments, the Company not being able to put a price upon an oppression, where none was, at least that they are concerned in: Yet for the procuring of their own peace and quiet, and to prevent all further trouble unto your Lordships and the Company, they do submit unto your Lordships disposal such further summe as will make the whole amount to 1500 l.
which

which is more than his ship and Goods were ever worth, or valued at upon the Insurance at her going forth, so as the Company may have thereupon full and final Releases and Discharges from the said Thomas Skinner and Frederick Skinner.

September 28. 1666.

By Order of the said Company:

Signed Jo. Stanyon Secr.

To which Skinner makes this Reply:

To the Right Honourable the Lords Re-
ferrees, concerning the Damages done
to Thomas Skinner Merchant, by the
East India Company.

The humble Reply of Thomas Skinner, to
the Proposals of the said Company.

THat since the Rapine and Spoil of the
Companies Agents by their com-
mands, took from me Nutmegs, white
Pepper, Provisions, &c. Of 3355
Ryals value, if but 3160 Ryals came to
their Account, yet are they answerable
for the whole, which as the Justice of Jam-
byes Attestation, That they took all with-
out Reason, monishes them of the duty of
Restitution, so the perishing thereof in and
with the Companies Ship Dragon threatens
them with the Improsperity of ill gotten
goods; And then though Ryals Cost put on
Ship-board in England but 4 s. 9 d. or
5 s. as they go for India, yet they come
home at above 15 s. clear, as by Oath of
the Companies own Servants appears, that
when Pepper was sold at London but 11 d.
a pound

a pound, though the Company sold ever since Anno 1660 at 11 d. 13 d. 14 d. and upwards; therefore they are justly so demanded with Interest.

The 1521 Ryals owing formerly by Leaver is become the Companies Debt, not only because he was their Servant and Agent, but because it was seized for them, and they have so much in their hands for my satisfaction, and therefore are Receivers thereof to my use, and may now pay it as safely, as they ought honestly to have paid it long since with Interest in manner as those above mentioned.

Concerning, my ship and goods taken on shore, my Persecution in Jamby and tedious Journey home, for which the Company offer payment by Fictions and Reproaches, the sence which the King of Jamby (who would have made that Factory a Publick Example, had not my importunate Intercessions in Confidence to find Justice at home prevented it) had of the Agents Inhumanity; And which, as their own Letters witness against them, was by their Order, what ever pretended against Frederick, executed against myself, and afterward owned by
the

the Company, cannot but goade their private Consciences, how Inseasible soever the Politique Conscience of a Corporation be, as it did Allnuts upon his death bed, (who confess and repented sorely, That he had been inticed and incited by the Agents unjustly against me, and had nothing of the depredations;) With what modesty do the Company then upbraide me with pretended debts, and calumniat the King and people of those parts, and so much undervalue my Ship and Oppression, when the contrary (to the Companies Knowledge) is so clearly manifest; Nor are they ignorant of the hopeful Designe in my Plantation and valuable Trade they have destroyed me of; (which, though it plainly appears) That my Ships intended Voyage for Maccassor, and freight thence, for which Consideration above 2000 Ryalls is deducted from the Ships worth, and other particulars in a Schedule, would have rendred alone above 20000 l. sterling yearly: Yet I submit that, and my whole Sufferings and Concerns, to your Lordships Determination, in hopes, That if I do not receive an adequate Recompence; yet I shall by his Majesties Grace, and your Lordships Direction,

direction, be enabled, by the restoring of my Island Barella in India, to reap a future benefit without the East India Companies further molestation or interruption, His Majesties late Charter granted the third of April 1661. prohibiting the Company expressly to undertake any thing against any Christian Colonie settled in India before the date thereof.

October the 6. 1666.

Signed Thomas Skinner

THE Lords Referrees finding this vast disproportion between the demands and Pretences of the Petitioner, and the real loss and damage which he had sustained; and the Offers on the other Side of the Company for his Reparation and Satisfaction, and seeing no possibility of reconciling them, though much pains had been taken in endeavouring it, at last resolved to report it back to the King and Council; and made their Report as followeth.

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IN pursuance of his Majesties Order in Council dated the three and twentieth of March last; we have treated with the Governor and Company of Merchants trading into the East Indies, and have heard the Council both of the said Company, and Thomas Skinner Complainant, in the disquisition whereof we found the said Thomas Skinner to have suffered much wrong by the said Company, and their Agents: and therefore endeavoured to persuade the said Company to give satisfaction to the Petitioner: but there being a great difference between the Petitioners Demands of Reparation for Damages, and the Companies Offer towards the same, our Mediation proved ineffectual therein.

As to the Island of Barella in the East-Indies claimed by the said Thomas Skinner; we conceive that he ought to enjoy the same, and from thence to trade into any part of the world, except into England. Given under Our Hands the sixth day of December. 1666.

Signed Gilb. Cant. Clarendon C.
J. Roberts. Ashley.

His Majestie upon this finding the *East-India* Company would be brought to no reason, thought fit to recommend the business to the House of Peers, to do the Petitioner Justice according to the merits of his Cause, which Message was brought to the House the 19. of *January* 1666 by the Lord Privy Seal, and all the Proceedings in Councel transmitted thither, and withall a Petition from *Skinner* himself was presented to them setting forth the wrongs done to him by the *East-India* Company.

The House of Peers, thus possessed of this business, Order a Copy of *Skinner's* Petition to be given to the Governor and Company, and they to bring in their Answer to it upon *Friday* the 28 of *January*: They accordingly bring in for Answer a Plea to the Jurisdiction of the House of Lords, and say; That the Petition is in the Nature of an Original complaint, not brought by way of Appeal, Bill of Review, or Writ of Error, nor intermixed with Priviledge of Parliament, nor having Reference to any

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Judgement

Judgement of that Court; therefore offer, If it will please to take any further Cognizance of that Cause: And then plead over and say, That the Company was incorporated by several Charters in the Reignes of Queen Elizabeth and King James, and likewise by a Charter from Oliver, which excluded all others not Members of the Corporation from trading in any part of the East-Indies within the limits of the said Charter, and that therefore if any such Injuries were done, it was by vertue of the Charter, and whether Criminal or Civil they were for ever released and discharged by the Act of Oblivion.

The Lords upon debate of this Plea, well knowing their own Right to retain even Original causes, when accompanied with such Circumstances as this then before them had; A poor man oppressed by potent Adversaries by a rich and numerous Society, where there was a Peer of the Realm, the Lord Berckley of Berckley, Gentlemen of great Estates, very many wealthy Merchants incorporated in one body, driving on a great trade in the Indies with

one joynt stock, resolved to imploy that whole stock for the destruction of any man, that should presume but to touch upon that trade without their leaves, which was this poor mans Case, & in a time when he had been encouraged thereunto by a general Liberty then taken to trade in that Country, who after the spoyle of his goods and Plantation there, to save his life (they having beset his passage by Sea) was glad to expose himself to the hazard and charge of a Journey of many thousand Miles over Land, to return into *England*, that he might here endeavor to get some reparation for all those losses, which that Company with their great purse and power opposed, and had already made him spend that little Estate he had left, and seven years attendance to prosecute that reparation without any fruite: So as to go to Law with them, and abide all the delayes and formalities even of the ordinary Proceedings at Law, much less what such Adversaries would have raised to him, he was no waies able; The Lords I say knowing

all this, and that what was pretended of the Indemnity by the Act of Oblivion was of no validity, that Act not at all intended for things of this nature, betwixt party and party not relating to the Warr, made no difficulty to overrule their Plea, and enter into the disquisition of the Fact, and to do the poor man Justice and give Release if they found cause for it, as a work worthy of them, much conducing to the administration of the publick Justice of the Kingdome, and most agreeable to the constant practice of that House from the very beginning of Parliaments: Wherefore they appointed Tuesday the 24 of *January* for the Counsel of both sides to be heard at the Barr. But such art was used, so many delays cast in by the Company and their Counsel, as the cause could not be brought to hearing during all that Session of Parliament.

At the next meeting of the Parliament in the year 1667. *Skinner* renewed his suit and presented a Petition the 30. day of *October*. In hæc verba.

T O

TO THE
RIGHT HONOURABLE &c.*The Humble Petition &c.*

That in the year 1657. Private Trade being open in the East-Indies, the Petitioner set forth his ship Thomas on a trading voyage to the said Indies, where being arrived in 1658 he possessed himself of a ware-house on the River side of Jamby on which his ship rode, wherein he put a great part of his goods, and also had a house at Jamby and goods therein, and purchased of the King of Jamby the Island of Barella, and built a house for habitation, and had contracted for planting of Pepper and other Commodities thereon. That in May 1659. the Agents of the Governour and the Company of Merchants of London trading into the East-Indies, by direction of the said Governour and Company, and of Maurice Tompson, and Sir. Andrew Riccard, seeing the Petitioners hopeful designe in his Plantation and way of trade with his Ship, did seize for and on the be-

half of the said Governour and Company his said Ship, goods, houses, Islands and 1521 Dollars of the Petitioners in the hands of Thomas Leaver the Companies Chief Agent at Jamby, which hath damaged him 17172 l. Sterling, besides the dis-appointment of his trade, disseizin of his said Island, loss of above six years time with attendance and vast charges here in endeavors for a just satisfaction &c. being much more valuable then all the other damages; And the said Agents used many violences upon his person in the said Indies, notwithstanding that the Petitioner proffered Bail and good Security there, to answer all their pretences; which inhumane and unreasonable dealing, forced the Petitioner through infinite hazards and expence to come most over Land for England, to seek redress.

That in the year 1661 and continually since he hath humbly besought his Majesty for Justice against the said Governour and Company, and persons aforesaid; and though his Majesty hath been graciously pleased to convene the said Company and Persons, and to hear the said Matters; and also

also to referre it divers times to several Lords of his Majesties most Honourable Privy Council, to hear them and mediate an End; yet they could not be reduced to Reason nor Justice, albeit the Petitioners Wrongs and Damages were made to appear, as well by their own acknowledgement, as other evidence produced before the Lords Referrees; but endeavoured by the strength of their Joynt-Purse to bear down the Petitioners Relief, though never so just, by wearying him from further Prosecution.

That the Petitioners whole Case not being remediable by the Courts below, he is constrained humbly to address himself to your Lordships, his Majesties great Council and Supreme Judicature, whom the Petitioner most humbly petitioned the last Sessions, and your Lordships were pleased to order their Attendance, but by their Dilatory Pleas and several non-attendances upon slight excuses at the day appointed by your Lordships, they frustrated the Petitioner of obtaining your Lordships Justice that Session.

wherefore

wherefore he most humbly prays, That your Lordships will be pleased to cause the said Governour and Company and persons aforesaid to answer the premisses before your Lordships by a short day, and that he may receive from your Lordships such Relief as shall be consistent with Justice and Equity.

And he shall pray, &c.

Signed Thomas Skinner,

The Lords upon this, order the Company to put in their Answer in Writing upon Wednesday the 6th. of November. They bring in a Plea as before; First by way of Protestation, That all the Injuries supposed to be committed by them and their Factors are untrue; Then plead as formerly, That the Petition is in the Nature of an Original Complaint, not brought by way of appeal, &c. as in their Plea of the last Session; but add, And therefore these Respondents do humbly demand the Judgement of this honourable Court, whither it will please to take any other

other or further Cognizance of the same; the rather, because the matters of Complaint in the Petition are such, for which remedy is ordinarily given in the Courts of Westminster-Hall, wherein these Respondents have Right to be tried, and ought not to be brought hither per saltum, nor drawn ad aliud examen: and so pray to be dismissed.

The Lords having received this Plea, to shew the clearness of their Intentions, and their tenderneſs of doing any thing which might but carry a Semblance, That they desired to engross to themselves the judging of particular Causes, (when determinable elsewhere, and nothing extraordinary in the Case to induce their Lordships to take Cognizance of the Matter, which apparently was in this Case of *Skinner's*, as hath been said before) would have the Opinion of all the Judges, before they proceeded any farther; And therefore made an Order; Monday the 2d. of December, That it be referred to all the Judges to consider of *Skinner's* Petition, and to Report to the House

House upon the Wednesday following, whether the Petitioner were relievable upon the matters therein mentioned in Law or Equity; and if so, in what manner, upon the several parts of the Complaints of the said Petition.

The day appointed the Judges came, and the Lord Chief Justice of the Kings Bench, reported, That all the Judges had considered of the Matter referred to them, and having met and considered thereof, were of Opinion; That the Matters touching the taking away of the Petitioners Ship and Goods, and assaulting of his Person, notwithstanding the same were done beyond the Seas, might be determined in his Majesties Ordinary Courts at Westminster; And as to the dispossessing him of his House and Island, That he was not relievable in any ordinary Court of Law.

Here then clearly by the Judges own Confession, part of the Case was not within the Power of Westminster Hall, and under favour of better Judgements, I think it will be but a venial Sin, if notwithstanding this Declaration

claration of our Sages in the Law, the Doubt do still remain with us, if some of the other points also, as that of the taking of his Ship; a Robbery committed *super altum mare*, be punishable by the Law of *Westminster Hall*; Nay it may not one be bold to affirm, That it is not? And may it not be doubted further, if any part of *Skinners Case* be tryable there, and if their Fiction in Law will reach any part of it? being all for Injuries and Violence against his Person and Estate in *India*: We know, that some Judges and Lawyers make it to extend to Contracts and Bonds made beyond the Sea, which they ground upon a Case in the Year Book of 48 E. 3. fol. 2. where Sir Ralph Pole brings his Action against Sir Richard Tocheſter, upon an Obligation bearing date at *Harſfleet* in *Kent*, *Lou de rei veritate Il fuſt fait en Normandie*; the Book ſaith; and his Action was held good: And *Brook* (who makes it to be at *Roan*, not *Harſfleet*) gives the reason in his Abridgement, *Faits 98. le lieu n'eſt traversable*, the place is not traversable

verfable; which is to be understood, when it is expreffed in the Bond, for a man cannot traverse the place againft his own Act. But the Law was ever understood to be otherwife till then, that the Judges would *ampliare Jurisdictionem*.

And (to fhew what the Law was before E. 3.) it was adjudged, *Mitchaelmas 2 E. 2.* That no Action would lie for a Bond made at *Barwick* (which did not then belong to *England*) *ou cest Court n'au' conifans*, where the Court hath not cognifance, faith *Fitzherbert*, *Obligation 15.* And fo *Perkins, Faites 121.* But both before and fince the Courts of Law were fo far from punifhing Injuries and Trefpaffes done beyond Sea, That even Treafon was not tryable till the Statute of *26 H. 8. cap. 13.* which faith, *That if any of the Kings Subjects fhall commit Treafon, though out of the Limits of this Realm, it fhall be tryed in any place that the King fhall appoint by Commiffion under the great Seal:* So a fpecial Commiffion was to be iffued for it: And feveral other Statutes

tutes were afterwards made of the same Nature; But for Trespases, as this of the *East India Company* against *Skinner*, there is no Act of Parliament to authorise the Prosecution at Common Law, nor (I think) any Book Case to warrant the practice of it; Book Cases against it there are many, even for Trespases in the Isle of *Jersey*, though within the Kings Dominions, because a *Venire Facias* could not go thither to summon a Jury from thence, *Mich. 42* (as *Mr. Prin* cites it, or *41.* as *Sir Edw. Cook*) *E. 3. Coram Rege, rot. 109.* An Inhabitant of *Jersey* complains to the King and Council of false Imprisonment and several Injuries done him in the Island: They send this Bill of Complaint to the Judges of the Kings Bench, and there the Bill is dismissed, *Quia compertum est* (saith the Record) *quod negotium pradietum in Curia hic terminari non potest, eo quod Juratores Insulae pradietae hic venire non possunt, &c.* Other Cases there are of the same nature. And if a Fiction could not help for *Jersey* being part of the Kings Dominions, much less could it help for Foreign

Forein parts, where the King had no
 Authority at all. Yet the House of
 Lords hath in all times exercised Ju-
 risdiction upon Crimes done and
 committed in Forein parts, as well
 as those within the Kingdome, both
 Treasons and other Offences, *As*
in the Cases of the Lord Latimer for the
loss of St. Saviour in Normandy, and
Oppressions done by him in Britany, 50.
E. 3. n. 21. Of William de Weston,
for the surrender of Outherwick in Flan-
ders, 1. R. 2. n. 38. John de Gome-
niz for Ardes, 1. R. 2. n. 40. Pierce
de Cressingham and John Spickworth,
for the Castle of Drinkham in Flanders,
7. R. 2. n. 17. The Biskop of Norwich,
for not doing Service beyond Seas according
to promise, and as he ought to have done, for
delivering up Graveling to the French,
not mustering his Army at Calice, as he
should have done, and not having his
Number compleat. n. 18. Sir William
Elinsham, Sir Thomas Trevit, Sir Hen-
ry Ferrers, Sir William de Hurnedon,
and Robert Fitz-Ralph, for delivering
strong Holds and Fortresses for Money,
 n. 42.

n. 24. John Hall a Servant to the Duke of Norfolk, for Murthering the Duke of Gloucester at Calice, 1 H. 4. n. 11. Sir William Richill for but taking the Examination of the Duke of Gloucester at Calice, 1 H. 4. v. 93. And multitudes of others, who could not have been tryed by the Common Law, were tryed by the House of Lords: And in truth a man may say the whole Case of Skinner in every point of it was only cognisable before them; However, it being out of all dispute, even by the Confession of the Judges, That some things in it are not tryable in Westminster Hall, I hope it may be thought reasonable, to leave as great an extent of Power to the House of Peers, which is the supreme Judicature of the Kingdom, as to the Court of Chancery, where the ordinary practice is to retain a Cause, when there is Equity in any part of it. The Lords therefore Ordered the hearing of the Cause, spent several daies in it, and having with much patience heard all that could be said on both sides, appointed a day to

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consider

consider what was fit to be done. *super totam materiam*: Upon which day, after a solemn debate, they came to this Resolution only in general, That *Thomas Skinner* was to be relieved by that House: And referred it to a Committee to consider what damages he had sustained by the Governour and Company trading to the *East Indies*, and to report their Opinions, what Recompence was fit to be given him for the same.

Whilest the Business was under the consideration of the Committee, and before the House of Peers had made any Determination of it, a Petition was said to be presented by the *East India Company*, unto the House of Commons; which I will set down word for word before I give it any Epithere; and upon reading it, I think every unprejudicate man will say, One cannot give it an Epithere bad enough; the Petition was thus;

TO THE
HONOURABLE,

The Commons of ENGLAND in
Parliament Assembled.

The Humble Petition of the Governour and
Company of Merchants of London,
trading to the East Indies.

Humbly sheweth,

That Thomas Skinner lately exhibi-
ted a Petition to the Right Honou-
rable, the Lords Spiritual and Temporal
in Parliament assembled, against your Pe-
titioners (many of which are and were
Members of this Honourable House, when
the said Petition was exhibited) for In-
juries pretended to be done by your Peti-
tioners Factors in the East Indies, in seiz-
ing his Ship, Goods and Money, and dis-
possessing him of a small Island there, all
which Matters (excepting what concerns
the Island) are Matters clearly determi-
nable in his Majesties Ordinary Courts of

Law, as by the Judges attending their Lordships, hath been resolved and reported. And for the Island, the same is parcel of the Dominions of a Foreign Prince, and so the Right thereof only determinable by the Laws of that Prince. That though the Petitioners did humbly tender a Plea to their Lordships, for that the Petition was in Nature of an Original Complaint (concerning Commoners only) and not brought to their Lordships by writ of Error, or Bill of Review, or any way of Appeal, and that the Matters therein were relievable in the Courts of Westminster Hall; and thereupon prayed the Judgement of that High Court, whether it would please to take further Cognizance thereof: Yet their Lordships have been pleased not only to give hearing to all the Matters in the said Petition contained, but have denied to grant the Petitioners a Commission, or so much time to send for their Witnesses now inhabiting upon the place, where the Injuries were pretended to be done, and without whose testimony it was impossible for the Petitioners to make their Defence.

To That upon the said hearing, their Lordships

Ship

ships were further pleased to appoint a Committee to assess damages against your Petitioners, which Committee is now proceeding thereon accordingly, whereby several Members of this Honourable House, who are of the said Company as well as others your Petitioners, may be highly detrimented. All which proceedings as your Petitioners humbly submit to your Honourable Judgements, are against the Laws and Statutes of this Nation, and Customs of Parliament. In tender Consideration whereof, and for as much as these unusual and extraordinary Proceedings of their High Lordships are not only grievous to your Petitioners at present, but may also be a President of ill Consequence to all the Commons of England hereafter, and for as much as your Petitioners have no way of Relief in this Case otherwise than by making their humble Addresses to this Honourable House, your Petitioners do therefore most humbly pray, That your Honours will be pleased to take the Premises into your grave Considerations, and to interpose with their Lordships for your Petitioners Relief there-

*The Jurisdiction of the
in, in such way and manner as to your great
Wisdams shall seem meet.*

*And your Petitioner as in duty bound,
shall pray, &c.*

*Signed by the Order and in the Name of
the said Governour and Company.*

Robert Blackborne Secr.

Copies of this flew about, were in every mans Pocket, and in every mans mouth, That the Lords were even forced to take notice of it, yet scarce could believe the House of Commons would receive such a Petition against them, so scandalous and so false; nor did they in the whole debate so much as mention the House of Commons, but looked upon it as a thing done without doors, thrown abroad, only to blast and asperse the House of Lords, and to bring them into the ill opinion and dis-esteem of the people; which after a serious consideration and debate, their Lordships voted,
To

To be a scandalous Libel against the House of Peers. And certainly so it was, both in Matter and Manner, and had the Matter been true, yet the Manner was scandalous: For though all had been true which was suggested, if the House of Lords had committed an Error, had done some thing grievous to the Petitioners, yet was it most unfit for private men to censure their Proceedings, declare them to be unusual and extraordinary, to be against the Laws and Statutes of the Nation, and Custome of Parliament, grievous to the Petitioners at present, and of ill consequence hereafter to all the Commons of England. Can the tongue of man utter more reproachful and stabbing words against any man or society of men? If this were true, do they deserve to live who are guilty of such things, to continue so much as Members of any State or Commonwealth, much less to have Power and Jurisdiction in it? Certainly to revile in this manner, and throw dirt upon the Highest Judicatory of the Kingdome,

was a most transcendent Presumption, and of a most dangerous Consequence to the whole Nation, even to those Commons of *England*, whom these Petitioners pretend for so much, making themselves as it were, their Patrons and Protectors, Tribunes of the people, and withall endeavouring to bring an Odium upon the whole Peerage. What is this but sowing sedition between the two Houses of Parliament, and between the Peers and the Commons of *England*? And what can it tend to, but to the very dissolution of the Frame of Government? The Scripture saith, *Thou shalt not speak evil of the Rulers of thy People*, and *Elihu* in *Job* moves this question, *Is it fit to say to a King, Thou art wicked, and to Princes, Ye are ungodly?* Yet these *Rabshakehs* dare heap up Reproaches against the Lords of Parliament, and bring railing Accusations against the Highest Order of Magistracy under the King in the Kingdom. And how little Cause was given them for this, the preceding Narrative of the proceedings of the Lords, is, I think,

think, an evident demonstration. Their Lordships had proceeded with all the tenderness imaginable, nothing of heat, nothing of Precipitation had appeared in the whole Transaction; They were not come to a full Conclusion and Determination of the business, which these Merchants had no reason to suspect that it would be severe upon them; And they might at least have staid, till it had come what ever it had been, and not have prejudged a Court, before it had declared it self, what Judgment it would give: All it had then done, was but what the *East-India* Company it self had, by their own offer of Reparation for the wrong done, acknowledged to be Just; For the Lords had only declared, *That Skinner was fit to be relieved*; But what relief, how much and in what sort, the *Quid* and the *Quomodo*, they had not determined, that was under the Consideration of a Committee. They themselves in their Answer to the Lords Referrees appointed by His Majesty in Counsel, had offered to pay unto *Skinner* for Nutmegs, White Pepper,

Pepper, and some other things, which had been unjustly taken from him by their Factors and had been brought to their account, 3160 Dollars ; And 1521 Dollars more they offered, for so many taken from him in *Specie* : And by this they confess they had done him wrong, and were willing to give him some Reparation : So without condemning themselves, they can not say the Lords had as yet done amiss : and notwithstanding all this moderation and Circumspection, that opprobrious railing Petition was preferred against them ; and which besides was full of untruths.

For the main matter in it, and which in truth had carried a shew of Injustice had it been true, is absolutely false ; And that is, that the Lords denied them a Commission, or time to send for Witnesses inhabiting upon the place, without whose testimony it was impossible for them to make their defence ; First it is not true, that the Lords denied them a Commission or time to send for Witnesses, for they never insisted upon it

it, which must have brought on a Resolution of the house, and have been entered in the Clerks Book, which was not: Some such thing was once said by some of the Council at Barr, but themselves went off it, knowing it would have grossly manifested their intent to delay longer a Poor man, who had already spent seven years in the prosecution of that suit; And as untrue is it, that they could not else make their defence, for multitudes of Witnesses were produced by them, and all fully heard with Patience, and enough acknowledged even by their own Witnesses (and more by their own offer (formerly mentioned) of giving *Skinner* so many thousand Dollars Reparation) for the Lords to ground that opinion which they had then declared, which was only. *That Skinner should be relieved*: A second untruth is; That they say all the matters complained of were clearly determinable in the ordinary Courts of Justice, excepting what concerns the Iland, whereas it appears there was likewise a dwelling house at

Jamby,

Famby, and a Ware-house by the River-tide, of which they dispossessed him, which were not so determinable even by the report of the Judges in their Opinion (but in truth one may say no part of the Complaint was so determinable,) they say untruely then in saying there was only the Land, that he could not be relieved in, and as untruely do they vouch the Opinion of the Judges for it, who expressly mention the House as well as the Land. A third untruth is, to say the Land was parcell of the Dominions of a Foreigne Prince, and the Right to it only determinable by the Laws of that Prince: Whereas that Prince had made an absolute bargaine and sale, and a Torall Alienation of it from his Dominion, and so had put it out of the Protection of his Laws. A fourth (and which they had inserted to be a Baite to draw on the House of Commons to espouse their Quarrel) is, that they suggest the complaint to be concerning Commoners onely, Whereas the *Lord Berckley* of Berckley a Member of the House of Peers is likewise of
that

that Company, which intitles yet more particularly that House to the Cognizance of the whole business upon point of Priviledge, one of their Members being a party. All these untruths are in matter of Fact. Then for their Inference upon them, the Judgement they give against the House of Lords, their censure of their Proceedings, to be against the Laws of the Land, and the Customs of Parliament, to be unusual and extraordinary, to be a President of ill consequence to all the Commons of England now and hereafter, this I hope no man will say to have truth in it, but to be a false Imputation and a Slander or (as the Lords themselves term it) a Scandalous Libell against the House of Lords. And as untrue it is, what they say in the close of their Petition, and withall most Injurious to the House of Peers *viz.* That the Petitioners had no way of relief in this Case otherwise then by making their humble Addresses to the House of Commons: Whereas ever since Parliaments have been in England, the constant practice hath

hath been (and multitudes of Presidents there are of it,) of Appealing to the next Parliament from any Judgment given by a former Parliament, which was grievous and unjust; And never in this world before was there any Appeal to the House of Commons from a Judgment of the House of Peers, much less to take a business out of their hands, or give a stop to their Proceedings, before they were come to a conclusion; Then which nothing can be a greater Violation of the Rights and Priviledges of either House; Nor would the House of Lords ever have endured, that any should have used the House of Commons so in any application unto their Lordships. Yet upon the examination it appeared that this Petition had been really presented to the House of Commons, and was there received. T

The Lords then fell upon the consideration of the main business in question between Skinner and the *East-India* Company, and making Reflexion upon what had been alledged on both sides
and

and the proofs, gave this Judgment, That the Governour and Company should pay unto Thomas Skinner, for his losses and damages sustained, the Sum of 5000 pounds, one thousand within two daies after the serving of this Judgment, two thousand pounds in three moneths after, and two thousand pounds more in three months after that.

And they referred to the Committee for Priviledges to examine, who was the publisher and disperser of that Scandalous Paper or Petition, which they had voted a Scandalous Libell, and to make Report thereof to the House.

In the disquisition of this business, which held many daies at the Committee and in the House, and where the Lords found much shuffling in the Persons they examined, who were Servants and Officers to the Company, It appeared at last, that the Petition had really been presented to the House of Commons, and well received by that House, that it had been prepared by

by a Committee of the Company, that Sir *Samuel Barnardiston* Deputy Governor of the Company, Sir *Andrew Riccard*, Mr *Rowland Winn*, and Mr. *Christopher Boone*, were of that Committee and Actors in it, but especially Sir *Samuel Barnardiston* the most Active man, who gave no Satisfaction to their Lordships in his Answers, which the others did, and by their submission obtained favour, but the Lords adjudged him guilty of contriving that Scandalous Paper, and fined him 300 l. to the King, and to remain a Prisoner in the Custody of the Black-Rod till he paid his Fine.

And now the House of Commons ownes the Cause, and seems not only to Justify these Actings of the *East-India* Company, but to lay blame upon the House of Lords, and passes certain votes to that purpose, which they brought up to the Lords and delivered at a Conference.

And began with telling the Lords, That they had examined the *East-India* Companies Petition, and found the Allegations

legations in it to be true, That such Proceedings had been in the House of Lords: And that the Lords had since adjudged them to pay 5000 l. to Skinner, and that the House of Commons thought these Proceedings to be of so very high Concernment to the Right of all His Majesties Subjects, that they had passed those Votes upon it.

The Votes were these: 1. That the House of Lords taking Cognizance of, and their Proceedings upon the matter set forth and contained in the Petition of Thomas Skinner Merchant against the Governour and Company of Merchants of London trading to the East-Indies, concerning the taking away of the Petitioners Ship and goods, and assaulting his Person, and their Lordships over-ruling the Plea of the said Governour and Company, the said cause coming before that House Originally, only upon the complaint of the said Skinner, and being a common Plea, is not agreeable to the Laws of this Land, and tends to deprive the Subject of his Right, Ease and Benefit due to him by the said Laws.

2. That the Lords taking Cognizance

E

of the Right and Title of the Island in the Petition mentioned, and giving damages thereupon against the said Governour and Company, is not Warranted by the said Laws of this Land.

The Lords were much surpris'd with these Votes, which gave them cause to make a serious Reflection upon what had pass'd in the business of Skinner, and to take a due examination of all Circumstances, The way that it came unto them at first, upon the Kings Recommendation, Their own Right to take Cognizance of, Judge and determine and give redress in causes of that nature; Then the merits of this particular cause, A poor man oppress'd by great Ones, very unable to contest with them at Law, and so very unlikely there to receive relief, and have any reparation from them (admitting it had been in the power of the Law to have helped him, which it was not) and The manner of their Proceeding in the hearing, examining and determining of it, in which they had us'd all the moderation Imaginable, going by steps and degrees, taking

taking first the Opinion of the Judges, to know if the man were relievable else where; who said he was but in part, and not for all relievable in *Westminster-Hall*, which made them undertake it; Then giving way to and bearing with many delayes of the *East-India* Company, suffering the business upoa several Pretences and excuses of theirs to be put off many daies, when their Lordships were prepared to hear it, and had laid aside other business for it, by which means a whole Session was lost to the poor man; And when at the next meeting of the Parliament it was heard, in which a great deal of time, and very many daies were spent, yet not presently to come to a resolution, but appoint a day for the debate of it, and when that day came, not to give a full Judgment, but only pass a previous Vote, *That some Relief was fit to be given*, and take longer time to consider What and How much, and referr it to the Consideration of a Committee to prepare it for the House; And that

then, in that Interim of time, before any thing was determined, whilst but in Agitation and under consideration what should be done, a Scandalous railing Petition to be delivered to the House of Commons against the House of Peers contrary to all usage, Right and Priviledge of Parliament, and what was expressly forbidden 9. H. 4. N. 22. And this notwithstanding (not known upon what mistake, for a mistake it must have been) to be received with approbation by the House of Commons, and seconded and confirmed by those forementioned Votes, which were brought up to the Lords, and declared unto them at a Publick Conference: All these things considered, made the Lords very sensible, who thought, if there had been failings, that a gentler application had yet been more convenient; but conscious to themselves of none, and very confident that what they had done was most Justifiable by the constant course and practice of their House, and in it self most Just and Equitable, they conceived it absolutely necessary for the
Vindication

Vindication of themselves and the asserting of their Rights, to pass likewise two votes in Answer to the two of the House of Commons.

That the House of Commons entertaining the Scandalous Petition of the East India Company against the Lords House of Parliament, and their Proceedings, Examinations and Votes thereupon had and made, are a Breach of the Priviledges of the House of Peers, and contrary to the faire correspondency which ought to be betweene the two Houses of Parliament, and unexampled in former times.

That the House of Peers taking Cognizance of the Cause of Thomas Skinner Merchant, a Person highly oppressed and injured in East India by the Governour and Company of Merchants of London trading thither, and over-ruling the Plea of the said Company, and adjudging 5000 l. damages thereupon against the said Governour and Company, is agreeable to the Laws of the Land, and well warranted by the Law and Custome of Parliament, and Justified by many Parliamentary Presidents Ancient and modern.

Two Conferences past between the Houses upon this occasion: One asked by the House of Commons, the other by the Lords, and what past at both, the objections of the one side, and the others Answers, What was said by the Commons against the Proceedings of the Lords, and what by the Lords to maintaine what they had done; the substance of all that was said on both sides. I shall here set downe as briefly as can, as I find them entred in the Journal Book of the House of Lords, where they are now a Publick Record.

The Gentlemen of the House of Commons, that managed the Conference on their parts, endeavored to maintian their votes by shewing the reasons of them.

They said, that Pleas being of two natures, Common Pleas and Pleas of the Crown, in this Case they said they did not meddle with any part of their Lordships Judicature concerning Pleas of the Crown, this being of the First sort, and those being of two natures Personal, or Real actions, and in both all proceedings must be by the Kings Original

Writ

Writ. And this being a Case between Person and Person, and so a common Plea, ought to be proceeded in the Ordinary way, by the Kings Original Writ: Presidents were brought for this, ushered in with a Preamble *That where the party never pleades to the Jurisdiction of the Court, it is ordinary for Courts to proceed, though in Cases not within their Jurisdiction.* The Presidents cited were out of the *Placita Parliamentaria*, four in Ed. 1. time.

1. President, 18. E. 1. *Johannes de Insula* against the Bishop of Winton fol. 33. *John de Insula* prosecutes for the King, complains that the Bishop had disposed of an Hospitall which belonged to Queen Eleonor the Kings Mother, and ejected her Tenant, the Bishop Pleads, that he found his Church seised of that advowson, & petit *Judicium si debeat sine Brevis Domini Regis inde respondere*; The Judgement is, *Et quia prædictus Episcopus invenit Ecclesiam suam seistam de prædicta advocacione tempore Creationis sue, Ideo ipse quoad hoc eat inde sine die ad præsens, & Dominus Rex habeat Breve versus ipsum Episcopum, quod reddat*

*ei Advocacionem &c. & quoad Ejectionem
inquiratur veritas per Patriam.*

2. President, in the same Parliament
18. E. 1. The Case of Hugh de Louthen and
the Heirs of Henry de Edelynthorp,
P. 43 Where it was much insisted upon
these words, *Nec est Juri consonum vel
hactenus in Curia ista usitatum, quod aliquis
sine Lege Communi & Breve de Cancellaria
de Libero Tenemento suo respondeat, Et
maxime in Casa ubi Breve de Can-
cellaria locum habere potest, There-
fore, dictum est predicto Ade, quod sibi
perquirat per Breve de Cancellaria,
si sibi viderit expedire.*

3. The Case of William de Valentia
Earl of Pembroke, Jone his Wife and
Isabell le Mareschal 18. E. 1. p. 44.
Isabell Complaines of the Earl for assu-
ming Jurisdiction in the Commote or
Hundred of Esterlove, (which is in the
Kings County of Kermerdyn, and not
in Pembroke-shire which belongs to the
Earl,) and ejecting her; He pleads that
he is seised of it in the Right of his Wife,
and they crave Judgement, *si sine Breve
Domini Regis inde debent respondere;*
the

The Judgment is *Quia prædicti Willielmus & Johanna sunt in Seisina de prædicta Jurisdictione per discesum hereditarium, & non per Usurpationem seu Purpresturam, quod eant inde sine die ad præsens, & Dominus Rex habeat Breve si voluerit.* The Gentlemen of the House of Commons observed upon this, That if there had been a Crime, as Usurpation or Purpresture, such Cases had usually been tried in the Lords House, but then added, That if that had been the Case, much might be said now, how the Constitution of the Government hath been altered since.

The 4th President in the 18. of E. 1. F. 51. was the Case of Roger de Somerton and the Prior of Buttele; Somerton follows for the King; and by Petition complains, that the Prior unjustly withheld from the King the manor of Somerton. The Prior Answers, that he holds it in the Right of his Church of Buttele, & petit Judicium si debeat inde sine Breve Domini Regis respondere; The Judgment is, Ideo prædictus Prior quoad hoc eat inde sine die ad præsens, & Dominus Rex habeat Breve &c.

And

And this though the King was concerned,
as was observed by them.

By these Presidents they said it did
appear, that in Cases of Free-hold there is
no Proceeding without an original Writ,
and then necessarily and Demonstratively
it must follow; That the Lords can not
Judge in these Cases, for there was never
any Writ Returnable Coram Dominis
Spiritualibus & Temporalibus, none
such is found in the Register or Fitzher-
berts Natura Brevium: And the reason
they said was the same for Personal Actions,
as those that concern Free-hold, that
Magna Charta and several Statutes
made in Ed. 3. time provide for our Try-
all by our Peers.

Some other Presidents they mentio-
ned out of the Roll of Petitions answer-
ed in the Parliament of 14. E. 2. as that
of William le Rous F. 408. Complaining
of the Kings Bayliffs, who had twice
dispossessed him of a house in Westmin-
ster, and praying remedy; the answer was;
Habeat Breve novae disseisinae in suo casu.

Then that of the Bishop of Winton
Elect in the same page, Complaining
that

that the Kings Officers had cut down the woods of the Bishoprick during the vacancy and praying remedy; The Answer is, *Habeat Breve de Transfess. in Canc.*

Next of Joane the widdow of John Fouks p. 409. by Petition Complaining of a wast committed in the Mannor of Radewynter; The answer is, *sequatur ad Legem Communem.*

Another President of Mariote the wife of Robert de Carle in the same page, praying remedy for a breach of the Peace by the Parson of Wormele and others, the Answer is, *Adeat Cancell. & habeat ibi Breve in suo Casu.*

And to a Petition of Robert le Sauffer p. 410 for a debt due to him, Answered, *habeat in Cancell. Breve de debito.*

The last President cited was p. 411. Ralph de Draiton Parson of Luffenham complaining against Robert de Vere and others for imprisoning him, till he resigned his living, taking away his goods, and committing other violences, for which he had a Commission of inquiry in the Country of York, and now prayed, remedy

remedy, The answer is, *quoad Resignationem non pertinet ad Regem, & quoad Commissionem habendam, ostendat in Cancellaria primam Commissionem & ibi respondeatur. Et habeat similiter in Cancell. Brevia de Transgressionibus sibi factis contra pacem &c.*

To this first part of that Conference, the Lords when they came to theirs, gave for Answer in the first place, That they could not but observe some thing unusual in the very title of the Petition, differing from the ancient Stile of those presented to the House of Commons; Then that they were much surpris'd; reading the Petition to find so many falsties, and yet to heare the Gentlemen that managed for the House of Commons say, that their House had examined it, and found all the Allegations in it to be true; Whereas in truth there were in it almost as many Falshoods as Lines; those Falshoods have been mentioned before, so as it is not needfull again to repeat them. The Lords took notice after, of the unusual Proceeding of the House of Commons, to take Cognizance of any matter depending

pending in their House, before their Lordships had given any Judgment therein, or communicated the same unto them ; And to examine, proceed upon, and censure by vote the Proceeding of the House of Peers, which they said the House of Commons could not Legally do, because they were not a Court of Judicature in any case, much less of the House of Peers, which is the Highest Judicature : And that in truth they had not means to come to the Knowledge of the truth, whereby to found a Right Judgment, because they have not power to give an Oath ; Nor in this particular had they heard any more then one side, having not heard *Skinner* at all : Nor yet had they conferred with the Lords, by which meanes they might have come to the knowledge of the grounds and reasons, upon which their Lordships had proceeded ; So as the Lords could not but wonder at this Judgement, which had been past upon them.

Then they came to that Assertion concerning Common Pleas, *That they must*

must be proceeded in by the Kings Original writ, and consequently not before the Lords, for which the House of Commons brought some Presidents, to prove that Free-holds were never examined in Parliament but alwaies left to the remedy at Law; And in the next place the Lords took into Consideration how they began their Presidents with this Preamble; That where the party never Pleads to the Jurisdiction of the Court, it is ordinary for Courts to proceed though in Cases not within their Jurisdiction.

To which the Lords said in the first place, as to the Assertion viz. *That all Common Pleas must be proceeded in by Original Writ and Consequently not before the Lords,* That it was as easy for them to assert the contrary, and upon better grounds; Being able to shew Presidents all along from the first and the most ancient Records we have, down to the latest and most moderne ones of the Proceedings of Parliaments, even within the memory and knowledge of every vong man, that the House of Peers have still exercised
this

this Jurisdiction, even in particular Cases of *Meum & Tuum*, between man and man, when they have thought good, (though that but rarely) and when moved to it by some thing extraordinary in the Case; and that no House of Peers hath done it less, and been more tender of entertaining such businesses, and more unwilling to be troubled with them, then this present House of Peers, upon which so much blame is laid, and which is the only House of Peers that ever Private Persons (found guilty and censured by it for foul Oppressions) did presume in that manner to accuse and impeach to any Court or Council or Company of men, no not to the King himself; Or that ever were censured, and such votes passed upon before. But we shall hereafter in its due place examine the matter of this Assertion, and shall shew that it holds not true even in the ordinary Courts of *Westminster-Hall*, whither of common Law, or Equity, where Cases of mens Free-holds are tryed every day with-

without any original Writt, and much less in Parliament. In the mean time we will take things in order as they were delivered.

And to the Preamble which ushered in the Presidents, *That where the Party never pleads to the Jurisdiction, it is ordinary for Courts to proceed, though in Cases not within their Jurisdiction, upon which the Inference must be, that Presidents then signify nothing to prove a Jurisdiction though never so many, though a constant Series of them in all times be made appear, except there be still a pleading to the Jurisdiction, and that Plea overruled; The Lords thought this a strange Argumentation, and took the force of the Argument to lye rather the other way, That it is a clearer Proove of a Jurisdiction, to have it never or seldome questioned, and be still exercised and submitted unto, then if it be some times opposed, though it be made good and maintained against that Opposition: And they thought, that in this particular Case,*
they

they had good Warrant for their Jurisdiction, finding it so seldome opposed, even by the House of Commons own shewing, who could bring but four Presidents, where any had pleaded to their Jurisdiction, and the Plea seemingly admitted, (for it is but seemingly, as will be shewed upon the Examination of the Presidents themselves:) Whereas multitudes were produced of the exercise of their Jurisdiction, and some, Where the parties had desired a tryall at common Law, and the Lords would not grant it, as that of *William Paynell and Margaret his Wife in the Placita Parliamentaria* of the 30 of Ed. 1. p. 231. The Case was this; Margaret had been formerly the wife of John Cameys, and he yet living had left him, (as she alledged) with his consent, and lived with Paynell as his wife, and was married to him: Cameys dying, Paynell and she sue for the Thirds of the *Mannor of Torpell* which had been the Land of Cameys. It was objected on the other side, That she lived in Adultery with Paynell in Cameys life time, and

so had forfeited her Dower. They upon that desire to be tryed by their Country, if Adultery or no; What say the House of Peers? Do they send them into the Country as is desired? No, Videtur Curiae quod non est necesse contra tantas tamque manifestas Evidentias, Præsumptiones, Probationes &c. ad aliquam Inquisitionem Patriæ Capiendam procedere &c. Et ideo consideratum est quod prædicti Willielmus & Margareta nihil Capiant per Petitionem suam; sed sint in Misericordia pro falso Clamore &c.

This shewes that the Lords some times would retain Causes, though sometimes they did dismisse them, not for want of Jurisdiction, but as it seemed to them convenient, and their Occasions would give leave, & as they had or had not leasure for it from the greater Affaires of the Kingdome, or that some Circumstances in the merits of a Cause made it more or less worthy of their Consideration. As if one of the parties was powerfull in his Country, and suspected to have an Influence upon

upon the Juries, the Lords would then some times retain a business, and determine it themselves.

As in 3 R. 2. N. 24. The Case of John Earl of Pembroke and William le Zouch Complaining that they were sued for certain Lands in York-shire by Thomas the Sonne of Sir Robert Roos of Ingmanthorp, and alledge, That the said Thomas sought to come to a tryall in the Country, which he had gained and corrupted. And therefore pray for redress, and a tryall by Parliament, giving this reason for it, Que lls par tels Malveis Compassemens, et Procuremens en pais ne soient desheritez. That they may not lose their inheritance by such wicked contrivances and practises in the Country. Do the Lords then suffer it to go on to tryall in the Country? No, They take the matter into their own hands, appoint John Knezet, and John Cavendish Chief Justice, and John Belknap Chief Justice of the Common Pleas to examine it and make Report to them, which they did.

And so likewise in the Case of Pontingdon

tyngdon and Courtney 4 H. 4. N. 21. Sir Phillip Courtney a great man in the Country oppresses Pontyngdon, dispossesses him of his Land by force, he comes to the Lords, praies Pur Dieu Et en ocuure de Charite d'ordeigner remedies en cell Cas; For Gods sake and as a work of charity that they would give remedy in this case. Setts forth in his Petition, that he had before in a Parliament held at Winchester made his complaint, at which time Sir Phillip laid the Bastardy of his Father as a Barr, and that the Lords Answer then was, That he should have right done him, and committed the business to the Arch-Bishop of Canterbury to take care of it; That before the Arch-Bishop, Sir Phillip and he agreed to go to a tryall upon that Issue, and that there should be a sufficient Jury of the principal Knights and Esquires of the Country, But that Sir Phillip had named some of those principal men, and withall poor men of less sufficiency, to the intent, that the great men making default, the poor should stand, and that these poor men durst not against Sir Phillip, maintain the truth (les queux pources hommes n'oisent ny envers

envers le dit Sir Phillip la verite dire)
 That thereupon he Petitioned again the
 Lords in the next Parliament sitting at
 Westminster, and informed them of all
 these Particulars, whereupon they Ordered a
 Writ to go to the Judges of Assize of that
 Country, commanding them to admit none to
 be of the Jury, but such as had 40 l. a year
 Land, and those to be chosen out of the
 whole Country notwithstanding any usage or
 Challenge to the Contrary; But that now
 Sir Phillip finding that the charge of Bas-
 tardy would not hold, contriving still the
 wrongful disinherison of the Petitioner, had
 started a release unduely gotten from one
 Thomas Pontyngdon a Parson, whose
 beirethe Petitioner is, And the Petitioner
 is thereby like to be ruined si il neit vostre
 tres Hautissime et tres excellent secours
 et aide) if the Lords would not afford him
 their most High and excellent succour and
 help. This was the effect of the Petition.
 The Lords upon this make an Order to di-
 rect the tryall, the Point in Issue to be the
 Bastardy, that the Release should be laid
 aside as null and void, that if the Bastar-
 dy be proved, Pontyngdon shall be for ever
 barred

barred to sue hereafter, and if not proved, but that his Father was Mulier, he should then recover the Land with Costs and damages; And they further Order a Writ to the Sheriff to Impannell none of the Jury, that had not 40 l. per annum Land. So then three several times, in three several Parliaments did the Lords take Cognizance of this Cause, being a Common Plea for a mans Free-hold, and that Originally in the first Instance, not upon an appeal, or Writ of Error, or any of those waies to which the House of Commons would now limit them; They direct the tryall, the Issue, the Condition and Qualification of the Jury, and the Judgment: and if this be not taking Cognizance of a Cause, I know not what is: And well was it for that poor Gentleman, That the Lords had that Jurisdiction, that they could take Cognizance of his Cause, to give him relief then: As now it was well for Skinner, That the Lords took Cognizance of his: Otherwise this powerfull Company had trampled him in the dirt and ruined him, as that violent man

man Sir *Phillip Courtney* (for so he appears to have been by several Complaints against him in the Parliaments of those times) had served *Pontyngdon*: And well will it still be for many a poor man to have such an Asylum, such a City of refuge to fly unto, to save himself from the violence and Oppression of power and greatness. And perhaps some of those who now endeavour to lay low the House of Peers, who would make it to be of no signification, to have no power, no Influence upon the Kingdome, be as salt that hath lost its Savor, only *Magni Nominis Umbra*, a Name of Peerage without ability to help themselves or any body else; perhaps I say, even some of them, should they prevail now, may hereafter repent it, and wish they had not removed an Ancient Land Mark, which heretofore was in Veneration, and looked upon, as that which bounds both power and Liberty, and is a guard to both by keeping both within their due limits, and hath ever been held most necessary to the Consti-

tution the Government of this Kingdome for the Preservation of it, and as servicable to Monarchy for the keeping up of Regal Dignity and Authority, as usefull to the Subject for the maintaining of his just Liberry and Freedome.

But let us go on with the Conference, and see what was said by the Lords to the Presidents cited by the Commons.

To the first of *John de Insula* against the Bishop of *Winchester*, the Lords said, it was no dismissal of the Bishop for want of Jurisdiction, for then it would not have been said, *Eat inde ad presens*, but rather *ad perpetuum*; This is but a Temporary dismissal, no more but as if they had said, Well, the Bishop saith, he was seised of that advowson in Right of his Church; Let the King (for whom *John de Insula* prosecutes) take his Writ out of the Chancery, and try for that; And for the Ejection Complained of, let that be tryed by a Jury of the Country, and see if things can be so ended; If not, come again

again then, and we will hear you; But for the Present we dismiss you. So the Lords concluded, That this President made nothing against their Jurisdiction.

To the 2^d of *Hugh de Louthor* and the Heire of *Edelyngthorp*, upon which the Commons did so much insist, and particularly upon the expression, *Nec est Juri Consonum; nec hactenus in ista Curia usitatum &c.* The Lords said, That neither this President well examined would make much against them; For that *Adam* concerning whom and upon whose occasion that was said, was not at all before the Lords, as a Partie in the Cause before them, but came in of himself, unsent for, unlooked for, layes in a claime which the Lords of that Parliament had not heard of before, nor did at all then question; So as it cannot be said that there was any dismissal of him or of his business; But the Lords say, Let him pursue and recover his Land by a Writ out of the Chancery if he will, and that he sees it convenient for him (*si sibi Viderit expedire*)

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pedire) and they go on to determine the business, which was before them; The Case was thus, Thomas de Normantull an Escheator had order concerning Hugh de Louther for certain Lands then in his Possession which had been seised into the Kings hands, as held of him in Capite formerly by Henry de Edelyngthorp, to whom one Eston had granted them and to the Heirs of his body lawfully begotten, and having none to returne to Eston, under whom now Louther claimed. The order was, That Louther should give Pledge to come and Answer at that Parliament for the profits of those Lands to the King: Louther comes as he was bound, and at the same time one Adam comes also, pretends himself to be Son and Heire to Edelyngthorp, and demands the Land, Louther said, he is a Bastard, and the Lands belong not to him: And the Lords they say, they have nothing to do with him, let him sue for his Land where he thinks best, and so send him away, But Louther they adjudge to do his homage, and to be Answerable to the King for the Rent; And for the Title of the Land, what do they? do they let it alone, and

and meddle no more with it, as a thing not at all within their Cognizance or Jurisdiction. Nothing less; They Command the Escheator Normanvil to make enquiry upon Oath, if Edelyngthorp had any Heire lawfully begotten, who he was, and upon what Title he claimed, and to give on account of it at the next Parliament, Ita quod idem Escheator ad proximum Parlamentum post Festum Sancti Michaelis Domino Regi distinctè et apertè inde respondeat.

So as the Lords then were farr from thinking they must not meddle with such things: And for that expression of *Non est consonum &c.* rendred as the ground of that Judgment of dismissal; First it is answered, it was no Judgment at all, not only of dismissal, for Adam was no party in the Cause; Then it is no part of the Judgment, if there were a Judgment, but preceedes it; The Judgment such as it is, or rather the Answer to Adams demand, followes in these words, *Dictum est prædicto Ada quod sibi perquirat per Breve de Cancellaria si sibi viderit expedire*, So as the preceding words, may

perhaps have been but inserted by the Clerk that entred the Order; But take it at the strongest, Admit that the Lords then present in the House had inserted those words, as their sence at that time, Is that binding to the House, that it may not be of an other opinion at an other time? In that very Parliament of 18 E. 1. How many times have they been of an other mind? How many examples are there of Particular Causes Judged and determined by them? And shall one Swallow make a Summer, one single President overballance multitudes of Presidents to the Contrary?.

In the last place it was said, That this President did not *Quadrare*, sute with this present Case of *Skinners*, fort at was meerely concerning a *Liberum Tenementum* and within the Realm where the Law had free Course, here is Rapine, Oppression, Spoiling of goods, dispossessing one of an Island in Forrein parts, *extra potestatem Legis*, assaulting the Person of a fellow Subject, a violent Interruption of the trade and commerce of the Nation; Which concernes the Govern-

Government of the Kingdome, is a matter of State, and highly entrenches upon the Authority of the King, which will suffer much, if he suffer one subject to exercise a Tyrannicall Dominion over an other, though in an other Country: And is against the profit of the King, which is much concerned, That no violence be used in the management of trade, to bring a Scandal upon the Nation, make it stinke in Forrein parts, that none will have to do with us, which must needs become the ruine of our trade and so of all His Customes.

If one Merchant do that which is prejudicial to an other, or to a Company, let them Complain of him to the King, who will command him home and punish him: And if he will not come (for that may be objected) being so farr off, out of reach, then the King will give them leave that are wronged and grieved by him to right themselves. But that they should do it of themselves and in their own Case be Judges, Witnesses and Executioners,

against all reason and Justice. So the Lords were not at all convinced with this President neither, but still thought, they had done very well in Censuring the *East-India* Company for their Misdemeanors and wrongs done to *Skinner*, and in adjudging them to give *Skinner* Reparation for it.

The 3^d President was that of *William de Valentia* and *Isabell de Marechal*, in which the Lords observed the dismission to have been only *ad præsens*; But withall observed, that the bare reading of the Case in the Book will satisfy one of the Jurisdiction of the Peers, to retaine such Causes: It sayes, *That William de Valentia had at the fore going Parliament been Ad querelas Isabellæ le Marechall allocutus et ad rationem positus, impleaded and put to Answer, by what right he assumed such an Office and such Power in the Hundred of Hosterelegh, and that he then alledged he did it in the Right of his wife, and that it being his Wifes Inheritance he ought not to be put to answer without her, Ita quod datus fuit dies ei ad hunc diem ad Parlamentum Domini*

Domini Regis viz. a die Paschæ in
tres Septimanas. *And then his wife
and he appeared by their Atturney, and after
pleadings, The Judgment is, Quia præ-*
dicti Willielmus Et Johanna sunt in
seifina de prædicta Jurisdictione et de
Hæreditate ipsius Johannæ per des-
censum hæreditarium et non per Usur-
pationem seu Purpresturam &c. Con-
sideratum est, quod eant inde sine die
quoad præsens; Et Dominus Rex ha-
beat Breve si voluerit &c. The Lords
knew they had Jurisdiction, else they
would have dismissed the Cause the
Parliament before, and not have adjour-
ned it to the next Parliament upon that
ground to make the Wife a Party, as
we see they did: And whereas the
Commons had upon this President ob-
served, that if there had been Crime in
the Case, as Usurpation or Purpres-
ture, then they acknowledged that in
such Cases the House of Lords did
usually proceed and try them, but
withall added, That if that were the
question, much might be said how the
Constitution of Government hath been

since altered : So as they soon retracted their admittance of but so much of the Lords Right, and what they had given with their right hand, they would soon take again with their left.

But first, for their Concession of Judging Crime, the Lords say, that suffices for their Indemnity, as to what they have done in this particular Case of the *East-India* Company and *Skinner*, for here is Crime sufficient, and Usurpation and Purpresture, taking them in the larger sence for invading any other mans Right, and not only where the King is concerned, as those termes are taken some times : And then for the Qualification of their Gift upon the Change and alteration of the Government, The Lords Answer, That when they shew the Time, when that alteration was made, and the Persons by whom, and the Manner how (if Legally done) they shal then believe & submit, and not till then: But they never heard of any thing, that till now so much as looked that way, except that Vore of the Assembly called the Rump, which
declared

declared the House of Lords useless and dangerous and therefore to be abolished and taken away; and by a Clubb Law they did take it away. But even they that passed that Vote, and did make that Clubb Law, thought the Judicature necessary and fit to be continued, for they immediatly assumed it to themselves, and fairely voted themselves into that Power by the Name of the Commons of England, the very same Title that the East-India Company do now make use of in their Petition to the House of Commons.

To the 4th of *Roger de Somerton* prosecuting for the King, and complaining of the Prior of Buttele, for unjustly withholding from the King the mannor of Somerton; And the Judgment upon it, *Idco prædictus Prior quo ad hoc eat inde sine die ad præsens*: The Lords say, it is but a Temporary dismissal as the others were, and signifies nothing as to the point of Jurisdiction: And they wish

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the Commons would have pleased to cast their eye upon the ensuing Case in the same lease, of *William de Valentia* again, and of him upon the same occasion (concerning his Wifes Inheritance as formerly,) where there is not a Dismission of the Cause as formerly, but a determination of it, and that determination again referred unto and confirmed by a succeeding Parliament, to shew that the House of Lords sometimes would, and sometimes would not Judge and determine such causes as were brought before them: That Case was thus, *William de Valentia* Complaines of the Lords of the Council for admitting, during the Kings absence beyond the Seas, one *Dionisia* a pretended Daughter of *William de Monte Caniso* Tenant to the King of Lands held in Capite and formerly enjoyed by her Father in his life time, whereas his wife was true Heire to that *William*, and the Land belonging to her; The Lords of the Council justify what they have done, say that *Dionisia* was notoriously known to be the true

true Daughter of that William, and that the Bishop of Winchester, in whose Diocese she was born, testified it, The Judgment is, *Ideo videtur domino Regi quod prædictus Comes, Thesaurar. & Alij de Consilio bene et ritè processerunt*: It is not now *sibi perquirat per Breve de Cancel.* They do not refer him to the Chancery, as they did in the other Case. This was in 18 E. 1. In 20 E. 1. p. 103. he comes again to Parliament, and renues his Complaint, and that Judgment given before is confirmed; the words are these, *et de alijs Petitionibus suis viz. De hereditate Willielmi de Monte Caniso petenda, et etiam quod procedatur juxta Bullam quam eidem Willielmus et Johanna impetrarunt ad insciendum Processum, per quod Dionisia filia prædicti Willielmi Legitima censebatur, alias eis responsum fuit viz. in Parlamento post Natale Domini Anno 18. ut patet in Rotulis ejusdem Parliamenti, Ad quam Responsonem se teneant &c.* Nothing can be clearer then the continual practice of this Jurisdiction in the House of Lords, whensoever they pleased.

Not that it hath alwaies pleased them to trouble themselves with exercising this Jurisdiction, their time having been so taken up some times with businesses of a higher Nature, that they could not attend it, so as many times they have tyed up themselves by an Order of the House, not to receive any private business: As in the Close Roll 18 E. 1. There is a memorable Order to that purpose; I will set it down at length in the very words, which are these,

Purces Ke la gent Ke venent al Parlement le Roy sunt souvent destaez et destourbez a grant grevance de eux e de la Court par la multitude des Petitions Ke sunt botez devant le Roy, de queux le plus porreient estre espleyez par Chancelier et par Justices, purveu est, Ke tutes les Petitions Ke touchent le sol weynent primer al Chancelier, e ceux Ke touchent Justices v ley weynent a Justices, e ceux Ke touchent Juerie weynent a Justices de la Juerie. Et si les besoings seent si grans v si de graces, Ke le Chancelier e ces autres ne le pussent fere sans le Roy, dunc Ils les porterunt par lur meins de

de meine devant le Roy pur s'arier
ont sa volenté. Ensigne nulle Peti-
cion ne veigne devant le Roy e son Con-
seil fors par les mains des aravant ditz
Chanceler e les autres Chef Ministres,
Enlike le Roy e son Consail pussent sanz
charge de autre busoignes entendre a gros-
ses busoignes de sun Reaume e de ses Forei-
nes Terres. Thus in English, In regard the
People who come to the Kings Parliament,
are oft delayed and disturbed to the great
grievance of themselves and of the Court, by
the multitude of Petitions exhibited before
the King, of which most could be dispatched by
the Chancellor and Justices; It is provided,
That all Petitions, that concerne the Seal
shall come first to the Chancellor, and those
that concerne the Exchequer to the Exche-
quer, and those that concerne the Justices
of the Law shall come to the Justices, and
those that concerne the Jewes to the Justices
appointed for the Jewes; And if the busi-
nesses be so great, or so of Grace, as the
Chancellor and the rest can not end them
without the King, then they shall with their
own hands bring them before the King to
know his pleasure therein; So as no Peti-

tion shall come to the King and his Counsel, but brought by the Chancellor and those Chiefe Ministers : that so the King and his Counsel may without the trouble of other busines attend the great busineses of his Kingdome, and of his forrein Dominions.

This is the Order, in which two reasons are expressed, for their not receiving particular Petitions, one in the beginning the other in the end, First the ease of the Petitioners, and of the House it self, which for their multitudes could not give every one his dispatch; and secondly, that freed of them it might attend the Publick business of the Kingdome; Not for want of Jurisdiction. And yet be all manner of busineses so put by? No! Great ones, and such as need grace and favor are still reserved: But take it at the strongest, admit they had put all out of their own power, yet it will be granted, they had power, till they did in this manner divest themselves of it; It appears they had by the Order it self, which mentions such multitudes of Petitions; I then aske, if such resolution of the House at that time

time could be binding to perpetuity ? The Houses of Parliament we know are masters of their own Orders, and themselves when they please alter the Orders they have made ; much less then be they binding to succeeding Parliaments. And it is obvious to every man, who will either look into the Records of Ancient Parliaments, or will but recollect his Memory and call to mind what hath passed in our late Parliaments, that in all times the House of Peers hath acted contrary to this Order ; Taking Cognizance even of smaller matters, which the ordinary Courts of Justice do every day dispatch : And no House of Peers did ever do it less then this, which in truth hath not done it at all, though it be now so quarrelled with for having relieved one poor man from the oppression of the mighty, when no inferior Court could do it : And this too the only Cause of this Nature, that they have medled with during this whole Parliament, which hath lasted so many years, and hath had so many Sessions ; And a Cause particularly

recommended unto them by the King (who is the Fountaine of all Justice;) not one taken up by themselves, which makes not their Case the worse, as it may well be hoped.

But suppose there had been no Reservation at all in that Order of 8 E. 1. of any Cause or any business, but that the King and Lords had at that time bound up themselves absolutely from meddling with any of those Petitioners Cases, and for the Present waved the exercise of their Jurisdiction in all such matters, had this been a Renouncing of their Jurisdiction and quitting it for ever? No Court but may upon some parricular occasion suspende and wave it's Jurisdiction, it doth not therefore follow that it must never make use of it again. The Court of Chancery doth sometimes appoint a Tryall at Law of points in a Cause, which it might have determined it self, if it had pleased: And at an other time it will determine things of the same nature, The House of Peers may do the same and wave their Jurisdiction when they

they please. It did it 13 R. 2. N. 10.
in *Changeours Case*. Adam Changeour
(So is his Name in the Record though the
Exact Abridgement call him John) peti-
tions the King and Lords against Sir
Robert Knolls, Setts forth, how owing
1000 l. to Sir Robert and his Wife Con-
stance, he had let him have Lands to re-
ceive the Rent till he was Satisfied his debt;
That Sir Robert had received more then
his money due, yet kept the Land, so prays
remedy. The Answer is indorsed up-
on the Petition, Let a writ be directed
to Sir Robert Knolls to appear in Parlia-
ment the Friday after Candlemas next,
to Answer the things contained in the Pe-
tition. Upon bearing the business the Lords
leave it to be tryed at the Common Law.
This seemes a stronger President for
trying all at Law and not in Parlia-
ment, then any which the Gentlemen of
the House of Commons urged at the
Conference; For here was an absolute
dismission of the Cause, and not *ad præ-*
sens only, as was in their Presidents. But
I believe such wise and knowing men
could not but see, that this President
I would

would not so much have helpt one way, as done prejudice to their Case an other way. The Prejudice, it would have done, had been this, that themselves by their own shewing had overthrowne one of their maine Arguments, which was, That all Proceedings in cases of Freehold should be by the Kings Writ, and that no Writ was ever made Returnable *Coram Dominis Spiritualibus et Temporalibus*; Whereas here had been in their own President mention of a Writ returnable in Parliament, which is *Tantum*, and signifies the same thing: But I have in this Discourse given Examples of several others in the same kind, where Writs are issued by Order of Parliament returnable in Parliament: and many more there are, if it were necessary and worth the trouble to set them down. And then, what had they gotten by telling us, That the Lords once would not retaine a Cause, which was tryable at Law, and would for once wave their Jurisdiction in such Matters? When it was shewed to them by multitudes of Presidents, That

That the Lords had most frequently done otherwise at other times in Cases of the same Nature.

And Presidents in the Affirmative are those that prove a jurisdiction, especially when many in number are produced, and some of all times and in every Kings Reign (of which the Records can be had,) which shewes a Continuance of, and so an unquestionable Right to such a power. One, or two, or twenty then in the Negative (that the Lords did not do so in such and such Cases) Nay I say more, were the Number equall, as many in the Negative as in the Affirmative, yet it could not disprove their Jurisdiction; It would only shew, that their Lordships were free Agents, to do it, or not do it, as they saw Cause; But their Jurisdiction remained still entire to do it, whensoever they would.

And when all is done, I may say, all this is *Nihil ad rem*, and concernes not the point in question, which is, If the Lords have done well or ill in relieving Skinner against the East-India Company,

Company, for he was not relievable at the Common Law (as hath been shewed :) And if he had not been relieved, there had been a failer of Justice: So as there was a necessity of their Lordships acting in that particular, to keep up the publiick Justice of the Kingdom. And all Presidents, and all that can be said and urged, to shew that the House of Peers ought not to meddle with matters determinable at Law, are in truth out of doors, and can not concerne this House of Peers, which never did it, but the contrary; For whensoever it appeared, that any business before them was proper to be tryed at Law, they presently dismissed it: Yet since their Right is questioned, they must defend it, though they gave no Occasion for it, having not at all put that Right in execution, nor (as it may well be presumed by their proceedings hereto) ever intending it.

As to the 6 other Presidents, of Petitions Answered in the Parliament of the 14 of E. 2. which the Gentlemen of the House of Commons themselves

selves seemed not to lay so much weight upon; The Lords thought they did wisely in it, for they were not such as would bear weight to build upon; The Lords of that Parliament, according to the several natures of the businesses Peritioned for, dismissed the Petitioners with several directions; Which shewes they took Cognizance of those matters; One was directed to take out his Writ *novæ disseisinæ*; and an other to bring his action of Trespass; the third they send to the Common Law; the fourth into the Chancery; the fifth they Order to bring his action of debt; the sixth who complained of several things, to him they gave particular Answers, and particular Directions to every point; One of which (they said) pertained not to the King, that is, to his Laws, so they could give no Order in it; it was concerning the Resignation of a living, which was to be tryed by the Laws of the Church; For the other points, they disposed them into their proper Channells. Was this to be done by a Court, that had

no Jurisdiction in these matters? No rational man can think so.

But it would be considered, that in this Case of *Skimmers* the Lords could give none of those Answers, neither *sibi perquirat per Breve de Cancellaria* nor *Sequatur ad Legem Communem*, or robring this or the other Action. For neither Law nor Equity in the Ordinary way of the Inferior Courts could relieve him for the loss of his real Estate in the *Indies*: the Judges said, he was not relievable for his House and Island: So as none of those Presidents are applicable to the point in question. Not that the Law, even in the ordinary execution of it, provides not for the punishment of all Crimes: It declares against and condemns the Fact, but can not reach the person to punish him, when he hath committed that Fact in a Foreign Country, *ubi lex Anglia non currit*. And the House of Peers hath but helpt the Law to inflict such punishment upon Offenders, as by the Law was due to them, which otherwise they had escaped. And were it
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but this, it sufficiently justifies the Proceedings of the Lords in that particular Case. Then as to the Jurisdiction of that House in the generall it will be made as apparent as the Sun at Noone, how they have in all times exercised it to the relief of all persons, who stood in need of their relief, even for things done within the Kingdome.

Where the Law had provided a remedy, they applyed it; Some times themselves would take the pains, in Cases that deserved it, where there was some thing extraordinary to move them to it, and when they were at leisure from the more weighty and important Affaires of the Kingdom, Some times they would send it down to the Inferior Courts to do it for them, and give them Authority for it, (which they could not have done, if they had not had it themselves, for *Nemo dat id quod non habet*) as in the Case of certaine Rioters 11 H. 4. N. 38. in the Exact Abridgement, *Whom they turned over to the Kings Bench, and gave those Judges Authority to the end the busines.*

where the Law had not provided, there they would not meddle themselves, and declared it so, That none else neither should presume to meddle: As upon the Petition of *Martin Chamberlain* in that 14 E. 2. p. 409. who upon the suppression of the Knights Templers desired to be put into the possession of a manor, which the Templers (whilest they stood) had held of him, The Answer is, *Quod non est Lex ordinata*, there was no Law ordained in the Case; And because the Law had not determined, how those Lands should be disposed of, the Lords would say nothing to it.

But will it not be said, that this makes good what the Commons objected, against the Lords retaining this Cause of *Skinners*, because some parts of it were not determinable in *Westminster-Hall*; Whereas, there being no Law concerning those points, till there had been one made, their Lordships should not have meddled with them? As the Lords in that Parliament of E. 2. would do nothing

in Chamberlains Case, because the Law had not provided for it; And as in those two Cases mentioned by the House of Commons, *That of an Inheri- trix Forfeiting by her husbands default; where (as the Statute of Westminster the second expressed it) a Durum est was in the Case; And that of the Hospitall of St. Leonards 2 H. 6. N. 37. which had a clear Right to a Corp Rent, Yet the Lords could not relieve them, but both were faine to have Acts of Parliament.*

This receives a twofold Answer; One, That there are other Motives in this Case to make the Lords retain it, and give *Skinner* Relief; Here is a poor man oppressed by a rich Company, with whom he was no waies able to wage Law: And that Consideration hath in all times prevailed with that House, which is composed of Persons of generous and noble Spirits, who can not see poor men oppressed without feeling in their hearts an Inclination and a desire to relieve them: But secondly we must distinguish between a Fact not being a Crime in the eye of the Law, which

is neither *Malum in se* nor *Malum prohibitum*, and when the Fact it self being odious and punishable by all Laws of God and Man, only a Circumstance, as the Place where it was Committed, puts it out of the Power of the ordinary Courts of Justice to take Cognizance of it, which are kept to formes, and may not transgresse them; In the first Case, the House of Lords can not punish that for a Crime which the Law doth not make a Crime, but in the second Case God forbid there should be such a failer of Justice in a Kingdome, that fellow subjects should robb and worry and destroy one an other (though in Forrein parts) and there should be no punishment for the wrong doer, nor Relief for the party wronged, when they come home; For then the King might be deprived of many a good subject, the Land loose many of her people, Trading receive much prejudice, and so King and Kingdome suffer great loss, and all without remedy.

But then say the House of Commons,

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where the Law hath provided, and there is an ordinary remedy, an extraordinary ought not to be tryed: To this the Lords Answer, that their House is not an extraordinary remedy, but the ordinary remedy in extraordinary Cases, and this of Skinners was so, both in point of difficulty, and point of Compassion.

And to what is said, That it is the Interest of all men in England to be tryed by Juries, and there is remedy against willful Juries by Attaint, but here is no remedy nor no Appeal, It is Answered, That the Court of Chancery disposeth of mens Estates without a Jury, Every Court of Justice, Every Judge in his Circuit sets Fines on mens heads upon several occasions without a Jury; Many are tryed for their lives and their Liberties (which is more then Estate) in the House of Peers upon an impeachment of the House of Commons, who are not a Jury, nor are sworn; therefore that Assertion holds not, That all men in all cases are tryed by Juries: And for matters of Appeal, there doth lye one to the next Parliament, or the

next Session ; But it will be said, That is to the same Persons ; And what hopes of any remedy ? For they will make good their own Act ; To this is Answered, It is what the Law of the Land hath established ; We must not be wiser than the Law ; It is what our Ancestors thought sufficient, what hath been the practice of all times ; And if we leave Posterity in as good a Condition as our Ancestors left us, they will have no Cause to Complain. Then we must presume, that Courts of Justice will do Justice, and will do Right ; that upon better reason shewed upon the Appeal, they will alter their minds, and give an other Judgement : They have done so heretofore ; How many Judgements of Parliament have been reversed by succeeding Parliaments ? And where there is Cause for it, we must hope, they will do so again.

Then where as it is said, *That the greatness of the Charge and the Inconveniencies of attending Causes in the Lords House is an Argument against their Judicature ;* They Answer, That it is not the House

House of Lords, that appoints such great Fees to Counsel; it being left to their Consciences that take them, and to the will and discretion of their Clients who give them, and who (without an Act of Parliament to restrain it) may give what they will, or rather what they must: However The Lords say, that the charge in Chancery is greater, there having been some times forty, fifty Orders made in one Cause; and the delay much greater, so as some Causes have lasted there very many years: And even at the Common Law, how many Verdicts have been given in one Cause, contrary Verdicts, one for the Plaintiff, an other for the Defendant? Contrary Rules of Court, the Judges give a Rule one day, and three daies after give an other clean contrary? As an Instance of it can be given but of last Trinity Term in the Kings Bench. These are Inconveniences, that lye not in the House of Peers. But admit there were Inconveniences: Many Laws are found inconvenient, which yet are put in execution,

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and all obedience given to them, whilest they stand unrepealed. And the Question is not now of Convenient or Inconvenient, but matter of Right. Is it the Right of the House of Peers? hath it still been the Custome and Usage of Parliaments, and consequently the Law of Parliament, that they should exercise such a Power of Judicature? If it be so (as it is and will be sufficiently proved) then the point of Conveniency or Inconveniency is out of doors; Well may it be a motive to alter it by the Law. But we will play with them at their own Weapon, and joyn Issue upon that point, that the Inconveniency is but imaginary, and so far from an Inconvenience, that it is the great advantage of the subject that it should be so: As well to give relief in Cases otherwise unrelievable, as to assist and help on the administration of Justice, when sometimes the greatness and power of some persons would else bear down, or much obstruct and hinder the Proceedings of Inferior Courts.

An objection also was raised, *How shall*

shall the Lords Judgements be executed after the Rising of the Parliament? For so the Subject may be deceived: And when he thinks, that with much Charge he hath made an end of his business, he is never the nearer; And it is Answered, that the House of Peers is not as the House of Commons, whose Orders are only of force, whilst they are sitting, they have power sufficient to require Obedience to their Judgements; Nor hath it been knowen, that ever any Judgement of the House of Peers was not submitted unto and obeyed, till now in this Case of Skinners, that the East-India Company stands out in defiance, and refuseth all Obedience to it. In 15 R. 2. N. 17. in the Case of the Abbot of St Oseches complaining against John Rokell for divers Embracements, and for not obeying an Order of the Duke of Lancasters made therein, the Lords Confirme that Order; and charge the Lord Chancellor to see Rokell perform it. Why may not the Lords do the same still, if they doubt of Obedience to their Orders? But there was never question made of it before

fore: And there are many Presidents of Orders given to persons to act some thing in the Intervalls of Parliaments, & to give an account of it to the Lords at the next ensuing Parliament, which shewes, that their Authority stil continues, to empower those persons to act and to execute their Order even when the Parliament is risen; 15 E. 3. N. 48. *The Bishops of Duresme and Salisbury, the Earl of Northampton, Warwick, Arundell and Salisbury are appointed to take the Answer of the Archbishop of Canterbury, and to report it to the next Parliament: And 51 E. 3. N. 96. It is there specified, How in the Parliament before, one Hugh Stafford had been accused of divers Extortions, and that a Commission was then granted to the Earl of Suffolk and Sir John Cavendish to inquire into it, who so had done, and had found him guiltless by 18 Enquests, which Sir John Cavendish did in that present Parliament witness to be true: By all this it appears, that the Authority of the House of Peers ends not with the Parliament, but their Judgements still continue in full force and power; And they*

they may appoint Persons to see them executed if they please.

And whereas the House of Commons doth not deny them a power of Judicature upon Writs of Error and upon Appeals, Will not the same objection lye as well against their Judgements in those Cases? For seldome that they be put in execution before the Parliament rise, so it takes away their whole Judicature, as in truth all the other objections would do, could they be made good.

And whereas it was said, *That none of the Kings Courts can give remedy, where the Kings Writ can not run; And where his Majesties Sovereignty doth not come, the Jurisdiction of the Peers can have no place;* It was Answered, that there Chiefly the Power of the House of Peers is to give remedy, because it only can: As for Treasons (till the Statutes of 26 H. 8. C. 13. 32. H. 8. C. 2. and 5 E. 6. C. 11. which have made them tryable within the Realm) and all Misdemeanors committed in Forrein parts, which never were, nor

p. 98. 114.

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yet are, tryable at the Common Law: Of this there are multitudes of Presidents, *Gomeniz, Weston, Segrave, Hall, Richill &c.*

And here within the Kingdome the the Kings Writ doth not originally run in all places, as for example, in the Counties Palatine, yet no man will deny the Authority of the Lords in Parliament taking place there; 9 R. 2. N. 13. *The Duke of Lancaster Complaines of Sir John Stanley for not suing out his Livery for the Mannor of Latham in the Dukes Court of Chancery, and yet entring upon it; They declare his Entry unlawful, and Order him to sue out his livery in the Dukes Court.* The Kings Writ did not run there, but the Authority of the Lords did.

Another Objection was, *That all Proceedings ought to be in Latin, and no Record to be in English:* But the Lord had thought, That none had ever yet doubted, but the House of Peers had been a Court of Record, where all the Proceedings & Orders & Judgements have been in English ever since *H. 6.* time.

time. All Acts of Parliament in English. All impeachments, even those brought up by the House of Commons, the Proceedings, and the Sentence, all in English. The Ancient Records were in French, and the Pleadings likewise, till the Statute of 36 E. 3. c. 15. which appoints Pleadings to be in English, and to be entred and enrolled in Latin (so the Print saith, but in Sir Robert Cottons of Abridgement of the Records it is observed that the Record it self warrants no such thing:) Then the Chancery Proceedings are all in English, The Pleadings, Orders, and Decrees: Yet it will not be denied but that is a Court of Record; did Sir Edward Coke, who alone is of another Opinion concerning the Chancery, and upon that ground, because the proceeding is in English, yet makes the House of Commons it self a Court of Record, where every body knowes all is in English; Inst. 4. part p. 23. so that he doth not *sibi* Constare.

The last Objection and indeed the Chief one (if true) was, That it deprives the Subject of the benefit of

Magna Charta, which will have all men to be tryed by their Peers, or by the Law of the Land; And the 25 of Ed. 3. C. 4. that none shall be apprehended upon Petition to the King or Counsel, (and Counsel here they interpreted to be the House of Lords) but upon inditement or presentment, or by writ Original; And the 42. of E. 3. which is to the same purpose; It was urged further that no Writ was ever made returnable Coram Dominis Spiritualibus et Temporalibus; And it was said in Regard of the Island, being in a Forrein Princes Jurisdiction, that it ought to have been done by Act of Parliament, for that no Court of his Majestie can give remedy, where his Majesties Writ can not run, nor can the Jurisdiction of the House of Peers have place there: An other observation they had upon Lex Terræ in Magna Charta, That in the Arguments of the Kings learned Counsel 3. Car. They made Lex Terræ to be the pleasure of the King, And the Lords were desired to consider upon this, if by arguing that the Proceedings of their House were maintained to be Secundum Legem Terræ, it may

not as well be said that Magna Charta will have men to be tryed Per Judicium Parium aut per Legem Terræ, That is, by the will of the Lords.

This is the substance of what was most materially urged against the Lords at that Conference. Some other things were said, rather to entertain the By-standers, then for any thing else; as the question asked *How the Lords should see further beyond sea then other men*; Indeed the Lords thought they might see as farr as other men, and as farr as the Court of Chancery or any other Court, but never undertook to see further: But they think, if some may have their wills, they may be laid so low, that they shall then see but a very little way; but that is not yet.

And another pretty Dilemma was made, which was this, *Are the Lords bound to recieve all Petitions or not? if bound, they may refuse none, for Magna Charta saith Nulli negabimus, and the King is Debitor Justitiæ to all his subjects; if they be not bound, then they must be partial, to receive some and dismiss others:*

But this *Argumentum bicornē* hurts with neither horne ; For the Lords in these very Presidents brought by the House of Commons in *Ed. 1. Ed. 2.* time did not deny Justice, when they sent the Petitioners unto those several Courts, where they should receive it, one to the Chancery, an other to the Common Law, and directed one to bring such an Action, another a differing one, according to their several Cases : And in those multitudes of Presidents brought by the Lords where Causes have been retained and determined in that House, they can not justly be charged with Partiality, when they are moved thereunto by some thing extraordinary in those Cases, which requires their Relief, and that it can not be had else where ; And a Question may be put on the other side, whither it can be believed, that Partiality was imputed to all the Parliaments heretofore, which at their first sitting appointed Committees, Tryers of Petitions for *England*, for *Ireland*, for *Gascony*, nay for *Flanders* (where the King had no Dominion)

minion) and sometimes in general, for all places beyond the Seas, to examine which were fit to be received, which not; And those Parliaments that the *Modus Parliamenti* speaks of, when a little before the rising of the Parliament, Proclamation was made in Publick places, to know if any had business to the Parliament, if any had Petitioned the Parliament & their Petition had not been answered; Certainly those Parliaments then did not apprehend to be reproached either with Partiality or deniall of Justice. And I would aske this further, If they can think that such a Committee of Tryers would have rejected *Skinners* Petition, and have said The Lords can take no Cognizance of your business, because it is concerning things done beyond Sea, when themselves were a Committee appointed only for such businessses.

But to let these *Sarcasmes* pass, and see rather what was said and may be said to the more solid objections, concerning *Magna Charta* and those other Statutes, which they will have to condemne the

Proceedings of the Lords. First it may be observed as a thing very strange, that in above 400 years since *Magna Charta* was first made a Law, it was never till now found out, that the Lords had broken that Law by the exercise of this Jurisdiction, nor were they ever charged with it before. But besides, do they by this any more break it, then the Court of Chancery, which by a Decree disposes of a mans Lands, or the Court of the Constable and Marshall, which takes away a mans life, or any other Court where the Judge for a Contempt presently sends a man to Prison or claps a Fine on his head, so takes both person and Estate, or the same House of Lords, when it Commits a man upon an Impeachment of the House of Commons, Judges, and Condemnes him; Here is no *Judicium Parium* (that is most certain) nor *Lex Terræ*, if you take it for an Original Writ; And yet no man will say, any of this is contrary to *Magna Charta*: Why then may not the Proceedings of the House of Peers, when it punisheth a man for robbing
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and assaulting his fellow subject in a strange Country, which puts the business out of the Cognizance of the ordinary Courts of Justice, receive as favourable a Construction? It can not be said, that the House of Commons, by their taking Cognizance of a Fact, & by their previous examination of it, and declaration upon it, giving it the Denomination of Treason or of any other lesser Crime, can create a Jurisdiction in the House of Peers, which it had not before, and give it new power and Authority to pass a condemnation upon the guilty Person, yet is it the Ordinary practice of the House of Commons (who have a Grand Committee of Grievances for that purpose) to impeach men so before the Lords.

They could receive not long since a Petition of one *Taylor* complaining against the Lord *Mordant* for oppression and false imprisonment, and the injurious taking away of an Office from him at *Windsor*: All which were properly tryable in *Westminster-Hall*, yet they could bring this up to the Lords,

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and crave Reparations and Damages in the Name of the Commons of *England*. And the Lords must not, though at the Kings recommendation, receive a Petition from *Skinner*, and give him relief for his whole Estate by violence and with a strong hand taken from him, part at Sea, part upon Land, in a strange Country, in neither of which the Courts of *Westminster* can afford him any help; For this must be against *Magna Charta*; So rather then the Lords shall do it, this must be a Failer of Justice in the Land, the King shall not be able to protect his subjects, the oppressor shall go free, and the cry of the oppressed shall go up to heaven for Judgement upon the Land, because he finds not Justice in it for his Relief.

98.105.
But I remember what the Gentlemen of the House of Commons said at the Conference, *That therefore the Lords should not have given Relief in this Case, because there was no remedy at all at Law*; This Objection hath been already answered, therefore I shall not repeat it here; only use one Argument more ad

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hominum, that they forget what themselves have done this very Parliament, entertaining a Complaint of one *Farmer* against the Lord *Willoughby* (who is since dead) for dispossessing him of his Estate, and other wrongs done him in the *Barbadoes*, which could not be tryed in *Westminster-Hall*, which yet they were preparing to bring up to the Lords, by way of Impeachment, if the Lord *Willoughby* had not dyed; And there is reason to believe, that if *Skinner* had in the like manner applied himself to them, there had been no breach of *Magna Charta*, nor no exceptions taken at the great charge of the Subject appealing to the House of Commons and prosecution there (though the charge be every whit as great and becomes much greater to the party that prosecutes, for when he hath done there, then he must begin again in the House of Lords, so the charge is double,) and the Judgement when it comes is never a whit more in Latin to make it a Record, then if the business had begun first in the Lords House, & as

much is it without Jury or Appeal, and no less danger of the non-execution of the Judgement after the rising of the Parliament; In Fine all that is said against the Lords Proceedings now, might as well be said against them then; And to say the truth, if it be well considered, it will be found, that the consequence of this opposition (should it work it's effect, and prevail) would be the overturning of the very foundation of all Authority of Parliament; that it might then well be said of the whole Parliament, that it did sit only to make Laws and give Subsidies.

But all this proves not the exercise of the Lords Judicature to be warranted by *Magna Charta*, it only saith, that other Courts, and the House of Commons it self do as bad: Which is no Justification of the Lords; For to erre with Company is not to be free from fault. Let us then see, what may be said to clear them all, but principally and Chiefly this Judicature of the House of Peers, which is the mark shot at.

And

And to do this, we must examine the Disjunctive proposition in *Magna Charta*, which saith, that every man shall be tryed *Per Legale Judicium Parium suorum, vel per Legem Terræ*; For if the Lords judge by either of these, they are well enough: And Sir Ed. Coke shall determine the question, whom no man can suspect of partiality for the House of Lords: He tells us in his 2. *Inst. E. 5. 1.* That *Lex Terræ* is *Lex Angliæ*, not *Voluntas Regis* as the Commons said the Kings Counsel would have it to be 3. *Car.* And less *voluntas Dominorum*; For it is not in an arbitrary way the Lords proceed, but according to the Law of the Land; to punish nothing but what the Law makes punishable, and Judge every thing according to Right, *secundum æquum et bonum*. So then *Per Legem Terræ* is all one with *Per Legem Angliæ*, or *secundum Legem et Consuetudinem Angliæ*, and what ever is done *secundum Legem Angliæ* is done *Per Legem Terræ*; And in his 1. *Inst. l. 1. c. 1. Sect. 3.* He tells us what *Lex Angliæ* is, he saith there are divers

Laws within the Realme of *England*, and reckons them up, *Lex et Consuetudo Parliamenti* is in the front of them; He names many more, the Civil Law by which the Court of Constable and Marshall, and the Court of Admiralty and Ecclesiastical Courts do act, the Law of War for the Court Martiall to act by, the Law of Merchants, the law of Stanneries, Particular Customes in several places of the Kingdome, Statute Lawes established by Authority of Parliament. Whoever and whatever is tryed by any of these Laws be it for life, Lands, or goods, it is still according to *Magna Charta* and though not *Per Iudicium Parium*, yet *Per Legem Terræ*. The Law and Custome of Parliament is one of these, and the Lords now acting agreeably to that, act agreeably to *Magna Charta*, and that they have acted so, is I think sufficiently proved allready, and will be further hereafter, when we shew you Presidents for it, from the beginning of Parliaments.

So for the other Statutes of the 25
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of E. 3. c. 4. and the 42. c. 3. They do not at all concerne the House of Peers, and were made only to prevent Vexation by Petitions and false accusations before the King and his Privy Counsel, as appeares by the Preambles of those Statutes. Though the Gentlemen of the House of Commons who managed the Conference were pleased to give them an other Interpretation, and to say, that the Petitions and suggestions to the King or his Counsel, which are condemned by those Statutes, are to be understood of those brought to the King and House of Lords; But can it be rationally believed, That the House of Peers of those times should themselves make so many Lawes, pass so many Acts of Parliament (five in the space of 17 years the 25 of E. 3. c. 4. the 28 c. 3. the 37 c. 18. the 38 c. 9. the 42 c. 3. all of them prohibiting that any man should be apprehended, imprisoned or disinherited upon an accusation or suggestion to the King or his Counsel, and enjoyning all Proceedings, to be by Original Writ, or by Inditement, or

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by Presentment of good and lawfull People of the Neighbourhood;) And they know themselves to be intended by those Acts, and yet still should act contrary to them, judge and determine so many Causes both Criminal and Civil, as they did from time to time.

Nay can it be believed, That the House of Commons in those daies would bring up Impeachments against men to have them tryed at the Lords Barr, if they did then conceive that those Acts of Parliament did forbid the Lords to meddle; For though the Commons House are sometimes called the Grand Inquest of the Kingdome to present the Grievances thereof, it is presumed they will not say, that their Presentment is the Presentment intended by those Statutes; For the Presentment mentioned there is the very description and true Character of your Country Juries: The words of the Statute are; *The Presentment of good and lawful people of the same neighbourhood, where such Deeds be done; And can any man think, that this is to be under-*
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stood of the House of Commons ? No certainly ; What then is it that makes the Lords Proceedings upon the Impeachments of the Commons to be Legal and not contrary to those Acts of Parliament ; Since there is neither Writ nor Inditement nor Presentment, and yet men are brought to tryal condemned and executed by their Judgements ? but only this, that it is the Common Law of the Land, being the Ancient, unquestioned, and undoubted Law and Usage of Parliaments. And thereby is there a clear demonstration of the true meaning of those Statutes, that it was the Regulation of the Kings Privy Counsel they aimed at, and not of the House of Lords ; that Counsel, of which Sir John Lee was one in that 42 of E. 3. n. 23. who was tryed and censured by that very Parliament, in which that Act was made : One of the Articles against him was, That being of the Kings Counsel, and Steward of his House he caused sundry men to be attached and brought before him, and made them answer singly to him, as if it had been to the body of the Counsel ; He was fined for

it, and committed to the Tower. The Lords John Nevil was likewise of this Counsel, & for misbehaving himself in it, Judgment of Imprisonment, and loss of Lands, goods, and Office was given upon him, 50 E. 3. n. 34. And in the same Parliament n. 18. The Lord Latimer was accused for divers miscarriages being a Counsellor, and for them he was by the Bishops and Lords committed to the keeping of the Marshall of England; and adjudged to make Fine and Ransome at the Kings pleasure, It is true he was enlarged presently by the Earl Marshall, one Arch-Bishop, three Bishops, the Prior of St. John, three Earls, fifteen Barons; and thirteen Knights being his Manucaptors, but the Commons desired further, that he might be no longer of the Kings Counsel which was granted; ; And this was not to put him out of the Lords House, for he continued still a Member there, and had his Writ of Summons to come to the next Parliament in the 51th year of that King. There is nothing more clear, then that those Statutes are all to be understood to mean the Privy Counsel; and so did the two Houses of Par-

Parliament interpret them 3 Car. in their Petition of Right, where the expression is, That against the tenor of those Statutes divers were detained by his Majesties special command certified by the Lords of the Privy Counsel; and one may boldly affirme that never any Statute, or Act of Parliament did term the House of Lords the Kings Counsel.

So that Article of *Magna charta* urged likewise at the Conference, *Communia Placita non sequantur nostram Curiam*, concernes not them neither; It was to fix the Court of Common Pleas, which (as all other Courts) was before that Ambulatory, and followed the King where ever he was, if he was in the Kingdome; and the Writs were made returnable *coram nobis ubicunque fuerimus*, which was a great Grievance to the subject, and cause of many discontinuances in sutes; The following words clear it, *Sed teneantur in aliquo certo loco*; Now the place of the meeting of the Parliament was alwaies certainly known, being expressed in the Writ of

Summons, which shewes, it was not meant for them.

And whereas it was said, *That in Cases of Freehold there is no Proceeding without an Original Writ*; Scarce any that walks *Westminster-Hall* but knows ~~the~~ the contrary, and the Course of Proceeding to be so farr other wise, as that not one Tryal for Land of forty comes on upon such a Writ; But by the delivery only of a Declaration of Trespass and Ejectment, any mans Inheritance of never so much value may be questioned, and brought to Tryal if it shall continue his or no; Nay, There is an Act of Parliament 18 El. c. 14. which provides expressly, *That after a verdict given, the want of an Original Writ shall be no Cause of Error to be pleaded in Arrest of Judgement, but that Judgement and Execution shall follow*; So farr is it from being true, that no Freehold can be judged without an Original Writ. And faine would I aske, what Original Writ they use in Chancery to sue men there for their Freehold? Is it any more, then for the Complainant to put in his Petitionary

nary Bill of Complaint, then take out a Writ of *Subpœna* for the Defendant to come in and answer by such a day; just what was heretofore used in the House of Lords, the Plaintiff put in his Petition, and the House ordered a Writ of Summons to Issue out to call in the Defendant; But in later times that House (as is usuall for all Courts to alter their Method of Proceeding, and find out some more compendious and easy way both for themselves, and for Suitors) so have they instead of a Writ as formerly, (which asked more time and charge to take out,) made it now, that an Order of the House shall be sufficient for that purpose, but they may returne to their Writs of Summons again when they please, *non debet*

And as to Original Writs, how unreasonable is it and against all reason, to make it now an Objection against the Judicature of the House of Peers, *That the Proceedings there not being upon those Writs, they ought not to meddle with matters of Freehold*, Since the Practice of the Law is now so changed, that even In-

ferior Courts have left off the use of them: whereas heretofore, when all other Courts were by the Law and the practise of those times tyed to those Forms, the House of Lords was not, but exercised still their Judicature in their own Parliamentary way without Original Writs; yet no such exception was then taken, but all their Judgements were still allowed of, approved and obeyed, and punctually executed.

And the other Assertion doth not operate much neither, viz. *That it was never heard of a Writ Returnable Coram Dominis Spiritualibus et Temporalibus.* For if it be meant of Original Writs, what doth that signifie, seeing they are not at all necessary, nor used now for Commencing of suites even in *Westminster-Hall*, much less in Parliament, where the use hath ever been otherwise? And if meant of other Writs, it is a foul mistake: For it hath been the Common practice of the House of Peers, especially in former times, upon any Complaint made to them by Petition, to Order a Writ

to Issue out with the Petition annexed, or containing the matter of it, directed sometimes to the party himself petitioned against, commanding him to appear, sometimes to the Sheriff of the County, commanding him to summon the party, to appear before them at a certain day, and the Writ withall to be then returned, so to enter into the examination of the busines, and afterwards proceed to Judgement: Ancient Presidents of this are *sans nombre*: 25 E. 1. m. 14. Upon Complaint of the Archbishop of York, That the Advowson of the Rectory of Bridgeford was detained from him by Boniface de Salucijs, a Writ reciting the matter complained of is ordered to be sent unto him, requiring him to appear in Parliament the morrow after St. Gregory the Pope at Carlile, and shew cause Quare ad finalem expeditionem prædictorum negotiorum minime fuerit procedendum, why the House should not proceed to a final dispatch of the busines; and he was enjoyned to bring the Writ with him, habeas ibi tunc hoc Breve is the Close of the Writ. The Printed Book of

the Placita Parliamentaria in Ed. 1 time, is full of Presidents of this Nature, & I have in this discourse cited very many both out of that Book & other Records of Parliament under the other Kings : I shal not therefore heap uy any number here, though it were ealie to do : I will only give a short account of one, which seemes to me a memorable one out of that Book of the *Pacita Parliamentaria p. 1. 57. the 21 of E. 1.* Magdulphus sonne of Malcolin Earl of Fife in Scotland complaines in Parliament to King Edward, That John King of Scotland had wrongfully dispossessed him of certain Lands in Scotland called Reyes and Crey, whereupon King Edward directs his writ to the Sheriff of Northumberland, commanding him to go into Scotland, (taking persons with him to testifie it) and there deliver a writ of Summons to the King of Scotland to appear before him such a day, ad respondendum prædicto Magdulpho super præmissis et ad faciendum et recipiendum ulterius, quod Justitia requireret : which was by the Sheriff performed at Striveling the morrow after St. Peter

ad vincula, who made his returne accordingly to the Parliament : And the King of Scotland appeared at his day, and was asked, if the Kings writ had been delivered to him by the said Sheriff, which he acknowledged, and said further Quod semper paratus est et erit Brevia et mandata Regis ut Domini sui admittere : Then he was bid to deliver in the writ, and he said he had delivered it to his Chancellor, and the Chancellor examined said he had it not there: But yet upon the Kings acknowledgement that he had received such a writ, his appearance was admitted, and he was willed to Answer to the matter of complaint put in by Magdulphus. His Answer was, That he was King of Scotland, and could not, without the Counsel and Advice of the good men of his Kingdome, speak to any thing that concerned it. This was judged by the Parliament to be Contemptus manifestus et Inobedientia expressa, and it was further Ordered that three of the Principal Castles of Scotland should be seised into the Kings hands, and so remain Quo-usque de contemptu et

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Inobedientia prædicta eidem Domino Regi satisfecerit. *But the King of Scotland came before the pronouncing of the sentence Coram Rege et Consilio suo, et fecit Domino Regi quandam Supplicationem ore suo proprio per verba subscripta, which words were these, Sire Ieo suy vostre home du Royaulme d'Escoce, et vous prie que de ceo que vous me avez mis adevant que touche les gens de mon Royaulme ausy come a moy, voillez mettre en foeffrance, j'esques a taunt que ieo ay a eux parle, que ieo ne sey surpris per defaute de Conseil, desicum les gens que cy sont oue moy ne moy voillent ne osent conseiller sauns autre du Royaulme; et quand ieo me averay a eux consaile, ieo vous respondray a vostre primer Parliament apres Paschle Conseil qil moy averont donnez, et fray envers vous ceque fere deveray. Sir I am your liege man for the Kingdome of Scotland, and do pray, that as to what you have proposed unto me, which concernes the People of my Kingdome as well as my self, you will have patience till I can speak with them, that I be*

not surprised for want of Counsel, seeing those
who are here with me, will not nor dare not
give me their advice without the rest of the
Kingdome: And when I shall have advi-
sed with them, I shall give you for Answer
at your first Parliament after Easter that
which they shall counsel me, and shall
do unto you that which I ought to do. This
request of his did King Edward grant,
the Record saith, Et Dominus Rex habito
super hoc Consilio ad Rogatum præ-
dictum prædicti Regis Scotiæ, et etiam
ad Instantiam Procerum et Magnatum
de Consilio suo, et Gratia sua speciali,
et similiter de Consensu prædicti Mag-
dulphi, concessit ipsi Regi Scotiæ sup-
plicationem suam, et diem ei dedit ad
Parliamentum suum post Pascha viz.
in Crastino Sanctæ Trinitatis &c, in om-
nibus in eodem statu quo nunc, Idem
dies datus est præfato Magdulpho.
Es per ipsum dominum Regem dictum
est præfato Regi Scotiæ, et injunctum,
quod habeat ad præfatum terminum
prædicta Brevia, quæ cognovit se re-
cepisse ut supra dictum est: He must not
forget to bring the writs with him.

1 R. 2. n. 29. A Scire facias was awarded against the Earl of March to appear before the Lords at the next Parliament, and to abide further Order: And 2 R. 2. n. 33. the Sheriff of Shropshire makes his return, that the same Earl was not found in his Bayliwick, it seemes he was dead, for there was then an other Scire facias ordered to warne his Son, who was then Earl, to be and Answer at the next Parliament after.

13 R. 2. n. 12. Upon a complaint of the Bishop and Dean and Chapter of Lincoln against the Mayor and Townesmen for some wrongs done them in Execution of their Charter, by order of Parliament a Writ was directed to the Mayor and Bayliffs of the Town, to appear at a certain day before the Lords, with Authority from their commonalty, for abiding their Lordships determination; they appear, but not coming with full Power, they are adjudged in Contempt. By the same Parliament such a Writ is directed likewise to the Mayor and Bayliffs of Cambridge upon a Petition and Complaint from the Vice-Chan

Chancellor and Scholars, and they run the like fortune, to be adjudged in Contempt for the like cause. So then there are Writts made returnable in Parliament. And many other examples may be given and some more will be given in this Discourse, and Presidents cited upon other occasions where Writts have been Issued so returnable; Which shall be observed as we go along: And these few shall in this place suffice to disprove that Assertion; Nor indeed was there any thing said on that side, that did not receive a full and satisfactory Answer.

For what was said of an Act of Parliament to give *Skinner* relief for his Island, doth in truth deserve no Answer, for it were ridiculous to think an Act of Parliament, or any thing else but an Army, could put him into Possession of his Island again; And it would be altogether useless unto him could he so obtaine it, his Plantation there being utterly destroyed, and all

his goods spoiled and lost both there and at *Jamby*, so as it would be impossible for him to carry on his trade to any advantage; Therefore it is Reparation and Satisfaction for his Damage, which he must have: And that is not the work of an Act of Parliament, but of a Court of Judicature. That advice then is not to be followed, and so we will leave it.

It now remains but to set forth the Presidents, which the Lords did on their part alledge, with some few more Antient ones, which shall be added for the Vindicating and Asserting of their Right unto this (never before controverted) point of their Judicature, in all Cases of what nature soever, when some thing extraordinary in those Cases did induce them to exercise it; Of which they were the sole Judges, that being a Trust lodged in them by the very Frame and constitution of the Government.

In the black Book in the Tower, which is Printed by the Name of Placita Parliamentaria, 30 E 1. F. 231. is the Case of Sir VVilliam Paynell and Margaret his wife suing for Dower upon the Lands of John Cameys, who had been Margarets former Husband, and whom she had left he yet living; And they now desiring to be tryed by their Country upon the point of Adultery, and the Lords not allowing of it; This hath been at large expressed before, therefore I only mention it now.

In the same Book p. 266. 33. Ed. 1. The Case of Nicholas Segrave, who was tryed in Parliament for leaving the Kings Army then in Scotland, and going over into France to fight with one John de Crumbwell upon a falling out between them, they being together in the Kings Army: This was a case not tryable in VVestminster-Hall, nor punishable in any ordinary Court of Justice by the Common Law of England, yet the House of Lords could try him, and

adjudge him worthy of death: And one thing more is observable in that Record, That a Writ is Issued to the Sheriff of the County to take foure Knights with him and in their presence to Summon Segrave, Quod esset Coram Domino Rege in proximo Parlamento suo apud Westminster. ad audiendum voluntatem ipsius Regis, et ad faciendum et recipiendum ulterius quod Curia Domini Regis consideraret in Præmissis: So here is a Writ returnable in Parliament, and the Sheriff did accordingly make his returne, that he had Summoned and charged him, Quod esset coram Domino Rege in isto Parlamento nunc juxta formam et Tenorem Mandati prædicti &c. It was therefore a gross mistake to say That never any Writ was made returnable in Parliament, as it was likewise one to say, That the House of Peers could give no remedy, where there was not remedy at Law, this President proving the Contrary to both.

21. Ed. 1. p. 135, 136, &c. The Arch-bishop of York is questioned in Parliament for excommunicating the Bishop of Duresme. The ground of the Excommunication was, For that the Bishop of Duresme had imprisoned two Persons employed by the Arch Bishop to cite the Bishop to appear before him. The Arch Bishop appeals, Et dicit quod de sententia a Canone lata, & per ipsum declarata, in Curia Domini Regis non debet respondere. The House of Lords goes on: The other side alleadging, That the Bishop in his Temporal Capacity, as Count Palatin, had committed those men, and it pertained to the King, and not to the Arch-Bishop, to take cognisance of the Imprisonment, if or no it was lawful: The Judgement is, Videtur Domino Regi in pleno Parlamento, prædictis Comitibus, Baronibus, &c. Quod prædictus Archiepiscopus quantum in ipso fuit, nitebatur usurpare super Coronam & Dignitatem Regiam, &c. Propter quod per Comites, Barones & Justiciarios & omnes alios de Consilio ipsius Domini Regis una-

nimiter concordatum est, quod prædictus Archiepiscopus committatur Prisonæ pro Offensa & Transgressionibus prædictis. Et super hoc ante Judicium pronunciatum, (licet unanimiter de Consilio prædicti Magnatum & aliorum concordatum fuisset tenendum in hoc Casu & similiter in Casibus consimilibus in perpetuum) prædictus Archiepiscopus Magnates & alios de Consilio ipsius Domini Regis rogavit, quod pro eo Dominum Regem requirerent, ut ante pronuntiationem Judicii ipsum ad gratiam suam admitteret & voluntatem suam. *They interceded for him, and he made Fine to the King of 4000 Marks, and was received to favour.* They did not only give a Judgment in this particular Case, (which being *Contra Coronam & Dignitatem*, was tryable in *Westminster-hall*) but they declare it to be a Standing Rule for the Judging of all Cases of like nature: which shews the absoluteness of that Power of Judicature, which is lodged in that House.

It was said, That the Lords could not take a Cause to themselves *per Saltum*, and before it had passed all the formalities below: That a Writ of Error did not lie from the Common Pleas to the Lords House, but must first be brought to the Kings Bench: And the Case of the Bishop of Norwich was urged, 50. Ed. 3.

And it is acknowledged, The Lords would not receive that Bishops Complaint, but sent him away with that Answer, nor could they give him any other: For Writs of Error have their Walk, and their gradual Proceeding chalked out, and settled by several Statutes, and by the Common Law of the Land: But what doth that signify against the Judicature of the House of Peers? No man, saith the Lords, can either take Cognisance of Causes, or judge Causes against the Law of the Land, and take them *per saltum*, when the Law prohibits it: But they do say and affirm, That by all the Examples and Presidents of former times, it hath been the usage of that House to receive Complaints, and

give remedy in all Cases, where the Law hath not expressly otherwise determined; and if there be any thing in the Case which merits, or requires, and needs something above the ordinary Power and Proceeding of the inferior Courts of Justice, to administer that Relief which is just and due. As in Cases of difficulty where a Court cannot, or of delay where it will not proceed, the Lords, who have a general inspection into the Administration of the Justice of the Kingdom, and into the Proceedings of all other Courts, have ever, upon Application made to them, assumed to themselves the Cognisance of such Causes.

14. Ed. 3. *Sir John Stanton, and his Wife, had passed a Fine of certain Lands to Thomas Cranthorn, who reverts them back, and by that means settled them upon the Wife; Sir Jeffry Stanton, as next Heir, brings his Formedon en le descender in the Common Pleas, where (after some Proceedings) upon a Demurrer in Law, Sir Jeffry could not get the Judges to proceed to Judgment;*

ment :^s upon which he Petitions the King in Parliament (which no man will deny to have been in the House of Peers.) They examine the Matter : And afterward order a Writ under the Great Seal containing the whole Matter to be sent to the Judges there, willing them thereby, if the Matter so stood, to proceed to Judgment without delay : They not doing it, an Alias is sent : And the Judges doing nothing then neither, and Sir Jeffrey renewing his Petition : The Lords commanded the Clerk of the Parliament, Sir Thomas de Drayton, to go to Sir John Stoner, and the rest of the Judges of the Common Pleas, and to require them, according to the Plea pleaded, to proceed to Judgment, or else to come into the House with the whole Record, so as in Parliament Judgement might be given for one or the other of the Parties. The Judges come at the day, and the business was heard, and it was adjudged, That Sir Jeffrey should recover : And a Writ under the Great Seal was sent to the Judges to give Judgment accordingly : Here then the King

King in Parliament, (that is the House of Peers) upon a Petition, assumes the Cognisance of a Cause, depending in the Court of Common Pleas; which was so far from having passed all the formalities below (that is to say, an Appeal to the Kings Bench and Chancery) that it was as yet undetermined in the Common Pleas. Nor did it appear unto them upon what ground it was, that the Judges gave not Judgment; So they might have answered Sir *Jeffrey Stantons* Petition with saying, that they would first see what the Court would determine, and what the Kings Bench afterwards; But they apply themselves to give him relief: And yet no Votes past against that House for so doing, as now hath been in the Case of *Skinner* against this.

So in the Parliament of 18. E. 1. p. 16. of the *Placita Parliamentaria*, William de Wasthul complains of Matthew del Exchequer, for cosening him upon the levying of a Fine before the Judges of the Common Pleas, by procuring

ring an Atturney to slip in other Lands unknown to Wasthul, and which he intended not to pass in the Fine: This is returned back to those Judges, because the Fine had been levied before them, *Et dictum est iisdem Justiciariis, quod Recordum istud in Rotulis suis faciant, irrotulare, & tam super Recordis isto quam super aliis ipsum Matthæum coram eis contingentibus procedant ad Judicium & debitum & festinum faciant Justitiæ Complementum.* True! the House of

Lords is not so bound up to forms, but that it may, when it thinks good, vary, and retain a Cause at one time, which it will not do at any other time.

Yet we see they were proper Judges in this Cause, for they order *Wasthulls* Complaint, and the Proceedings before them to be entred, as a Record in the Common Pleas, and those Judges to proceed upon it, which, if they had not had Cognisance of the Matter, had been all *Coram non Judice*, and could have signified nothing.

And I must observe one thing, which I think will not be denied, That
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all those *Placita Parlamentaria*, whatever is said to be done *Coram Rege in Parlamento*, is to be understood of the House of Peers, where the King was in those times commonly present, and alwayes understood to be there representatively; So as his Name was ever mentioned in the Proceedings, even when his Person was absent, being sometimes out of the Kingdom, sometimes detained away by sickness, or other occasion; As 50. E. 3. n. 35. it is said, *The King ordains, That from thenceforth no Woman should for Maintenance pursue Matters in the Kings Courts upon pain, &c.* And then was the King sick at *Eltham*, and could not come to Parliament, as appears by n. 42. and it was only the House of Peers that made that Order. So in Judgments, though in Ancient Times they were mostly entred as given by the King, yet it was the Lords House, which was *Curia Regis*, that gave them.

For we must know the KING hath a double Capacity of sitting in the House of Peers, a Legislative

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Capacity, when he hath in himself a Negative Voice to what even both Houses have concluded and done, which signifies nothing without his Assent, and his single Dissent makes it all null and void; This is in passing Acts of Parliament, and making of Laws; The other is a Judicial Capacity, when he will please to assist, and be present at the ordinary Transactions of the House, as heretofore was usual, which alters not the Constitution of it as it is a Court, gives it no more Power nor Jurisdiction then it had before, he being then but in a manner as Chief Judge, and not doing any thing singly, but according to the Plurality of Opinions; As when the Kings would in Person sit in the Kings Bench, which they have in former times done, (where still all is said to be done *Coram Rege*, though now he never come there) and in Our Memory King James hath set in the Star Chamber; I think no body will say the Star Chamber then, or Kings Bench before, did or could vary from their ordinary

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dinary Forms and Rules of Proceeding: No more can the House of Peers alter their Proceedings, or assume greater Authority by reason of the Royal Presence, to take Cognisance of other Causes, or do any thing, which by the Custome and Usage of the House, and the Law of Parliament, it could not else have done: But their Jurisdiction, and their way of exercising that Jurisdiction is still one and the same. And therefore 26.

H. 6. n. 52. When the King had given a Judgment of himself, without the advice of the Lords, in the Case of William de la Pool Duke of Suffolk, who stood impeached for Treason, banishing him the Realm for five years: The Lords entred their Protestation against it, as not done by their Assent, and so no Act of the House. And 5. H. 4. n. 11. The Earl of Northumberland coming into the Parliament before the King and Lords, and by Petition acknowledging to have done contrary to his Allegiance, in giving of Liveries, and gathering of Power, for
which

which he prayed pardon, in regard he yeelded himself, and came in to the King at *York* upon his Letters; And the King delivering this Petition to the Justices to be considered, The Lords made their Protestation, *That the Judgment appertained only to them; And therefore as Peers of Parliament, to whom such Judgement belonged, in weighing the Statutes concerning Treasons, and concerning Liveries, they adjudged the Fact of the said Earl to be no Treason nor Fellony, but only a Trespass finable to the King:* Whereupon the King received him into Grace, and pardoned him his Fine. All Power of Judicature in Parliament is then questionless in the House of Lords, where the King alwayes is Personally or Virtually, and the Judgment proceeds from them by the Authority and in the Name of the King: For the Power of Judicature in Parliament is lodged in them, together with the King, as is declared 1. *H. 4. n. 80.* where it is said, *That the Commons were only Petitioners, and that all judgments*

The Jurisdiction of the
 appertain to the King and the Lords,
 unless it were in Statutes, Grants, Sub-
 sidies, and such like. This hath ever
 been the Practice, and Custom, and
 Law of Parliament, since there have
 been Parliaments, and when this shall
 cease to be, the Ancient way of Free
 Parliaments will cease likewise.

1. R. 2. n. 30. Sir John de Cobham
 sheweth, That by the delivery of a Ring
 of Gold for seisin to Edward the third,
 he had settled the Reversion of several
 Mannors there named in the Crown, and
 now prayes it may so remain according
 to his Intention, divers Lords are exa-
 mined, the Judges Opinions are asked,
 who declare it to be a good Livery and
 Seisin: And so it is settled.

N. 32. William Fitzhugh, a Gold-
 smith and Citizen of London, exhibits a
 Bill of Complaint in the Name of the
 Comonalty of that Mystery, against John
 Chichester and John Bolsnam of the
 same Mystery, for divers Oppressions
 done by them; The Lords send for them,
 examine them, they deny those Oppressi-
 ons: And Fitzhugh refusing then to a-

now

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now his Bill, the Lords commit him to the Tower.

N. 35. Robert Hawley and John Shakell, are by the Lords sent to the Tower for refusing to bring forth a Spanish Prisoner taken in Battle, whom they had in their keeping, and others laid claim to.

N. 41. Alice Perrers ~~or~~ Pierce, who had been much in favour with Ed. 3. is questioned in the Lords House, Sir Richard Scroope Lord Steward of the Household managing the Tryal, for that contrary to an Order made by the King and Lords, 50. Ed. 3. n. 35. That no Woman, and she by Name, should pursue any Matters by way of Maintenance, upon Pain of perpetual Banishment, and loss of the whole Estate; She notwithstanding had perswaded King Edward to countermand Sir Nicholas Dagworth from going into Ireland, when he had been ordained by the Council to go thither for urgent business, which would have been profitable for the King and the Realm; And an other Charge against her was, for perswading the King

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to pardon Richard Lyons, who had been Farmer of the Customs, and for abuses and extortions had been censured in Parliament to forfeit his Estate, and be committed to Prison; she got all to be remitted, and his Estate to be restored unto him, even that part of it which the King had given to two of his own Sons for their lives. The hearing of this Cause took up several dayes; Many that had been Counsellors and Officers to the late King were examined as Witnesses. At last she is found guilty, and Judgment of Banishment and loss of Estate given upon her.

3. R. 2. n. 24. *The Case of the Earl of Pembrock, and William le Zouch, complaining of Thomas Roos for suing them concerning Lands in Yorkshire, and endeavouring to get a Tryal in the Countrey, (the Record is, Desirant D'estre a Liffue du pays trop suspicieusement, his desiring it being suspicious) so they pray, Que Ils par tel Malueis Compassements & Procurements en pais ne soient desheritez That they may not loose their Inheritance*

by such wicked practises and procurements: The Lords upon this retain the Cause, appoint some Persons to examine and report it: But this President hath been cited before at large, so I do but touch it here.

N. 22. Sir Philip Darcy complains, That the Prior of St. Johns of Hierusalem sues him in Chancery for the Mannors of Temple-hurst and Temple-newsom, which Ed. 3. had granted to John Darcy his Father, and produces a Deed shewing that the Priors Predecessor had passed the Fee of them to Ed. 2. The Lords order that Deed to be sent to the Treasurer and Barons of the Exchequer, to examine the Kings Title, and in the mean time stop Proceedings in Chancery. This is more then taking Cognisance of a Matter Originally, for they take it out of one Court, where it depended and was undetermined, and send it to be examined in an other Court, which shews the Ascendant they had upon all other Courts.

4. R. 2. n. 17. Sir Ralph de Ferriers had been seized by the Duke of Lancaster upon the Marches of Scotland upon suspicion of Treason, for holding Intelligence with the French the Kings Enemies, upon some Letters of his to several French Lords found and taken up by a Begger. He was brought into Parliament before the Lords, and put to his Answer. He first desired Counsel, then offered the Combate against any that would accuse him, both were denied him. Then he applied himself to his Answer, And after several dayes hearing, the Lords still remanding him to Prison, he so well defended himself, That the Lords suspected the Letters to be forged, and therefore committed the Begger, and bayled Sir Ralph, delivering him to his Manucaptors.

5. R. 2. n. 45. The Chancellor and University of Cambridg, Petition against the Major Bayliff and Commonalty of the Town, for breaking up their Treasury, burning their Charter, and by force compelling them to make Releases of some Actions they had brought against

against the Town, and enter into Bonds to them for great Summs. The Lords direct a Writ to issue out to the Maior and Bayliffs to appear in Person, and the Commonalty by Atturney. They appear. The Chancellor exhibits Articles against them, They being asked why their Liberties should not be seised, plead to the Jurisdiction, that the Court ought not to have cognisance of them: They are told, Judgment should be given, if they would not answer: Then they answer, and the business is heard. The Townsmen are ordered to deliver up those Deeds forced from the University, which are presently cancelled: The Town Liberties are seised into the Kings hands, and part of them granted to the University: Some are granted back to the Town, for which they were to pay an increase of Rent. Note, here is a Plea to the Jurisdiction, and that Plea Overruled.

8. R. 2. n. 12. The Earl of Oxford complains of Walter Sibell of London for a Slander, in having to the Duke of Lancaster and other Noble-men accused him of Maintenance. The Lords hear the
R business,

154 *The Jurisdiction of the
business, Commit Sibell to Prison, and
give 500 Marks damages to the Earl.*

9.R.2. n.13. *The Case of the Duke of
Lancaster complaining, That Sir John
Stanley had entred upon the Mannor of
Latham which beld of him, and had not
sued out his Livery in his Court of Chan-
cery. The Lords order him to sue out his
Livery. But this hath been already
mentioned.*

15.R.2.D.16. *The Prior of Holland
in Lancashire complains of a Riot com-
mitted by Henry Trebble, John Green-
bow and others, and of an Entry made
by them into the Parsonage of Whitwick
in Leicestershire. John Ellingham the
Serjeant at Arms is sent for them, who
brings them into the Parliament: The
Lords commit them to the Fleet.*

N. 17. *The Abbot of St. Oseches
complaineth of John Rokell for Embrac-
ery. This Case hath been already
cited.*

N. 18. *Sir William Bryan had pro-
cured a Bull directed to the two Arch-
bishops, to excommunicate some that had
broken up his House and carried away
Writings,*

Writings. This was read in Parliament, and adjudged to be prejudicial to the King, and to be in Derogation of the Laws: for which he is committed to the Tower.

N. 20. Thomas Harding accuseth Sir John Sutton and Sir Richard Sutton, and layeth to their charge, that by their Conspiracy he had been kept Prisoner in the Fleet: upon hearing of both Parties, for that the two Knights were known to be men of good Fame, The Lords adjudge him to the Fleet.

N. 21. John Shadwell complains against the Archbishop of Canterbury for excommunicating him and his Neighbors wrongfully, for a Temporal Cause appertaining to the Crown and to the Laws of the Land: The Lords hear the business, find the Suggestions untrue, and commit him to the Fleet.

1 H. 4. n. 93. Sir William Richill one of the Justices of the Common-Pleas (who by express Order of Ri. 2. went to Calais and took the Examination and Confession of the Duke of Gloucester, after murdered by Hall) was brought a Pri-

soner into the Lords House, the King present, and by Sir Walter Clopton Chief Justice apposed: And answered so fully, shewing his sincere dealing, that the Lords one by one declared him innocent: And Sir Walter Clopton pronounced him such.

4 H. 4. n. 21. The Case of Pontingdon and Sir Philip Courtney, where the Lords direct the Tryal, appointing what the Issue shall be: and what kind of Jury shall be impannelled to prevent Sir Philip's practices in the Country: It hath been cited before at large.

1. E. 4. m. 6. n. 16. The Tenants of the Mannor of East-Maine belonging to the Bishop of Winchester, the King being in his Progress in Hampshire in the Summer-time, complained to him of their Bishop for raising new Customs among them, and not suffering them to enjoy their Old ones: The King bids them come to Parliament in Winter, and they should be relieved: They come, and the King recommends their business to the Lords: They commit it to certain Justices to examine, upon their Report, and upon mature Deliberation,

liberation, it was adjudged, That the Tenants were in fault, That they complained without cause, and they were ordered to continue their said Customs and Services. Here observe, there was the recommendation of the King in the Case, just as now in *Skinners*, and this difference, that a question of Custom betwixt Lord and Tenants was properly determinable by the Common Law, and a Jury of the Visenage, and this of a Trespass in the *Indies*, to be punished in Parliament, or no where: which justifies the Proceedings there.

43. Eliz. the 18th of December, A Complaint was made to the Lords by the Company of Painters against the Company of Plaisterers, for wrong done them in using some part of their Trade. Their Lordships referred it to the Lord Maior and Recorder of London, to be heard, examined, adjudged, and ordered by them: Which was all one as if they had done it themselves: For it was done by their Authority and by their Order: Qui facit per alium, facit per se.

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18. Jac. The Lords took notice of the Proceeding of the House of Commons in the Case of one Flood, whom they had convented before them for insolent and scandalous words spoken by him against the Prince and Princess Palatine, examined Witnesses, and given Judgment in the Cause; which they look'd upon as deeply trenching upon the Priviledges of their House, all Judgments properly and solely belonging to them. Thereupon they sent a Message to the House of Commons and desired a Conference; At which Conference the Commons confessed, That out of their Zeal they had censured Flood; But they left him now to their Lordships, and hoped their Lordships would censure him; In order to which they sent up a Trunk of Writings concerning his Case: Then the Lords proceeded to the hearing of it, examined several Witnesses, and heard all Flood could say for himself; which done, they adjudged him, Not to bear longer the Arms of a Gentleman, To ride with his face to the Horse tayl, to stand upon the Pillory with his Ears nailed, to be whipped at a Carts tayl,

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to be fined Five thousand pounds, and to be imprisoned in Newgate during life.

21. Jac. Thomas Morley was convented before the Lords, for delivering a Scandalous Petition to the House of Commons (as himself affirmed) against the Lord-Keeper Coventry. Upon examination it appeared, that it had not been presented to the House of Commons, only to their Committee of Grievances, & that he had published very many Copies of it, even since his being convented before their Lordships, They adjudge him to be imprisoned in the Fleet, to pay 1000 l. Fine, to stand with his neck in the Pillory; to make his Submission and Acknowledgment at the Barr.

22 Jac. Mary Brocas petitioned the Lords to be relieved for a Debt of 1000 l. due unto her by Bond from the Muscovia Company. Upon bearing both sides, their Lordships order the Company to pay the Debt, with 5 l. per cent. Interest, out of the Levitations, which the said Company had made among themselves for the payment of their Debts.

The same Parliament, May 28. Thomas

mas Pynckney petitions the House in the behalf of himself and other Creditors of Sir John Kennedy, to be relieved for Debts owing to them from Sir John, by the sale of Barn-Elms, Lands in the possession of his Heir John Kennedy. The Lords, upon examination of the business, find cause, and so they order it, That Barn Elms should be sold to the best value, and the Profits to be sequestred in the mean time into indifferent hands; And that a Recognizance of 2000 l. in which Pinckney stood bound in Chancery should be withdrawn and cancelled.

The same Parliament again, Grizell Rogers Widow, petitions the Lords for the setting her Title to certain Lands in Heygrove in the County of Somerset, and for quieting and ending divers Suits and Differences between her and Sir Arthur Ingram, Sir William Whitmore, &c. They order her Satisfaction out of particular Lands, And all Suits to cease between them, And appointed Releases of all differences on both sides to be drawn and sealed.

4. Car. 31. Jan. The Lords Committees for Petitions make report to the House of a Petition of Benjamin Crokey against John Smith, in behalf of a Grammar-School at Wotton-Under-edge in the County of Gloucester, which School was endowed with great Possessions by the Widow of the Lord Berkly in Richard the 2^ds time, which were now much abated and brought to an under-value by the cunning practices of the said Smith. Upon which the Lords awarded a Commission to issue out of the Chancery, to survey all the said Lands; And ordered also a special Habeas Corpus to be directed to the Warden of the Fleet (where Crokey was a Prisoner) to bring the Body of the said Crokey before the Lord-Keeper, to the intent he might attend the said Commission; And ordered further, That if Crokey did make it appear the value of the Lands to be so as he said, and that to be approved by the Lords Committees for Petitions, then Smith to repay to the said Crokey such Charges as he shall disburse in the Prosecution.

In the Parliament of 1640, Decemb. 16. Upon report from the Lords Committees for Petitions, That Mistris James complained against Sir Edmond Sawyer for sheltring himself under a Royal Protection which he had procured, by which means she could not sue him upon a Bond of 500 l. for so much Money borrowed of her, and two years Interest, and so was debarred from helping her self by any Legal course; The Lords ordered, that the said Mrs James should proceed against the said Sir Edmond Sawyer for the recovering of her Debt in any Court, where she thought best, notwithstanding his Protection.

December 21. The Lords Committees report a Petition of Katherine Hadley, complaining that she had been kept a long time a Prisoner in the Common-Gaol in the Old Bridewell, without any cause shewn; the Lords ordered her Release.

The 22th of Decemb. Upon a Report from the Lords Committees of Sir Robert Howard's Case, complaining, that he had been committed Close-Prisoner

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to the Fleet by the High-Commission Court, and kept there three months, till he was fain for his enlargement to enter into several Bonds with Sureties in the sum of 3500 l. For which he desired Reparations, and his Bonds to be cancelled; The parties interessed were summoned and heard. And after due consideration, the Lords ordered a thousand pound damages to Sir Robert Howard, of which 500 l. to be paid by the Archbishop of Canterbury, 250 l. by Sir Hen. Martin, and 250 l. by Sir John Lambe, the Bonds to be forthwith cancelled, and delivered to Sir Robert Howard.

The 23d of Decemb. They reported the Case of William Dudley, that he having arrested the Lord Wentworth (son to the Earl of Cleveland) for a Debt of 400 l. entred a Caution in Mr. Justice Bartley's Chamber for good Bayl to be taken, yet Justice Bartley had released the said Lo. Wentworth upon such Bayl, as the said Dudley was utterly disabled to recover his debt. Justice Bartley being called, made no good Answer thereunto. The Lords thereupon order, that

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the said Justice Bertley should forthwith
assure unto the said Dudley his House
and Land near Barnet, for securing the
said Debt with Interest and Damages.

The same day they report likewise the
Case of Mrs Mary Stanhope Widow,
Daughter-in-law to the Earl of Chester-
field, complaining, that the said Earl
refused to assure unto her 40 l. per An-
num during her Widowhood, according to
a former Agreement made between them,
which appeared to be true by a Letter
produced under the Earl's hand; And
his Counsel being heard, and no good
cause shewn, why the Petitioner should not
be relieved: The Lords ordered the Earl
of Chesterfield forthwith to assure to the
said Mrs Mary Stanhope, his Daugh-
ter-in-law, 40 l. per Annum during her
Widdowhood, and to pay unto her such
money as was in arrear of the 40 l. per
Annum due to her for the space of two
years.

The 30th of December, the Lords
Committees for examining Abuses in
Courts of Justice, report the Complaint
of John Turner, a Prisoner in the Gate

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house, committed thither by the High-Commission Court, where he had lain fourteen years, for refusing to take the Oath Ex Officio: The Lords ordered him to be forthwith released.

The 21th of January, the Committee for Petitions, report the Complaint of William Waters and Thomas Waters, How they had suffered much by an untrue and false Certificate, made by Dr. Clerk and Dr. Sibthorp unto the Counsel-Table, for their refusing to pay Ship-money; whereby they were forced to pay the sum of 34 l. for Fees: Upon which Dr. Clerk and Dr. Sibthorp were heard at large: The Lords ordered them to pay back the 34 l. to the Complainants, which they had paid for Fees, and 100 l. Damages: And to be turned out of the Commission of the Peace.

The 22th of January, the Committee for Courts of Justice reported the Complaint of the Lady Frances Weld Widow, against the Archbishop of Canterbury and Mr. Dell, suggesting, That she had been much prejudiced by them in the recovering of a Debt of 1300 l. due

to her upon Bond from Mr. Child: Upon bearing of all Parties, the Lords find the Archbp. and Mr. Dell free from blame, and order them to be discharged concerning that business.

The 5th of February, the Committee reports the Complaint of Jeremy Powel, That the Bishop of Hereford had admitted a Clerk to the Vicarage of Burknill in Shropshire, though the said Powel in the Right of himself and of Mary his Wife, had caused a Ne Admittas to be directed to the Bishop. The Lords upon bearing the business, found, that the Bishop had done contrary to Law, and thereupon ordered him to pay unto Powel, by way of Damages, the sum of 30 l. And the said Powel, as Patron, to be left in the same condition for tryal of his Right, as he was before the Bishop had put a stop to his business.

The 9th of Febr. the Committee for Courts of Justice reports the Case of Nicholas Bloxam, That Andrew Sandeland Clerk had procured a Sentence against him in the High-Commission Court, by vertue whereof the said Sandeland
bad

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bad violently gained from him the possession of the Rectory of Great Waldingfield in the County of Suffolk. The Lords judging this proceeding of the High-Commission to be most injurious and contrary to Law, ordered, That the Cause should be left to a tryal at Law at the next Assizes for that County; That Sandeland should appear gratis, and plead, Not guilty, that so the Cause might come to a final Determination that Assizes.

The same day the same Committee report, That John Radway, William Newark, and Walter Cootes were presented Ex officio mero in the Ecclesiastical Court of Gloucester, and afterwards Excommunicated for going to Church out of their own Parish, and upon pretence of a Significavit which was imperfect, were arrested and cast into Prison, where they continued Eleven dayes, whereas there was no Writ justly taken out. The Lords Ordered that Dr. Baber Chancellor of Gloucester should pay to those three persons 40 l. for Damages, and the Undersheriffs Deputy Richard Byford

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Byford 20 l. upon the account of the
Arrest.

The 23d of Febr. the same Committee report, That Abraham Hill, a poor aged man, was committed to Prison in the year 1636, by Robert Buxton then Mayor of Colchester, by verbal command onely, without any Warrant, or Cause shewed, and continued a Prisoner sixteen weeks, to his utter undoing: The Lords Ordered, that the said Buxton should pay unto him 16 l. by way of damages.

The 5th of March, the Committee for Petitions inform the House, that Complaint had been made before them, That Nicholas Haws Gent. an antient man, had not yet sued out his Livery in the Court of wards, the Lords order him to do it without delay.

The 11th of March, the Committee for Petitions gives account to the House, that according to their Lordships direction, there had been a Tryal at the last Assizes for Suffolk, between Bloxam and Sandeland, and that the Verdict had passed for Bloxam: whereupon the Lords

Order,

Order, That Bloxam should discharge the Cure as Lawful Incumbent, and that Sandeland should deliver unto him the quiet Possession of it. It is worthy Observation, That the Lords, after they had referred the Decision of the Title for Matter of Fact, as to the forcible Entry to the Common Law, remained still Judges of the Cause, and their Judgement settled the Possession.

The second of April, 1641. The Committee Reports, That Lambert Osborne, Clerk, had complained of a Sentence in the Star-Chamber, by which he was degraded, and deprived of all his Spiritual Livings and Preferments, being a Prebend of Westminster, and Parson of Wherhamsted, Fined in 1000 l. to the King, and adjudged to pay the like Sum for damages to the Archbishop of Canterbury, and to be Imprisoned; The Lords Order, That he shall be freed and discharged of his Fine, Damages and Imprisonment, and be restored to his Prebendary and Parsonage.

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The sixth of April, 41. The Committee Reports, That the Lady Dyer had made her Complaint, That, primo Caroli, she had lent Sir Richard Trebburn 400 l. upon Bond, and sued to to a Judgement, but Sir Robert Pye, Mr. Burton, and others had extended all the Lands liable to that Judgement at so far undervalue, to deprive her of all the benefit of it. The Lords Order, That Counsel of both sides should agree to draw up Assurances for settling the payment of all the Parties upon the Judgement and Extent, to be all Signed and Sealed by them, and that the Lady Dyer should be first satisfied, and enjoy the Lands till then. One thing by the way is to be noted, That Sir Robert Pye was then a Member of the House of Commons.

The twelfth of April, 41. The Committee Reports a Complaint of Dr. Walker, That Sir John Lamb had unjustly taken from him his Offices of Commissary of Leicester, and of Official to the Archdeaconry there, which he enjoyed by Patent for life: That now Sir

John

John Lamb took the Profits of them to himself, And had forced him by many Menaces and Oppressions to release all Suits and Actions to his utter ruine and undoing, and to his Loss and Damage of above 1500 l. The Lords Order, That Sir John Lamb should pay unto the said Dr. Walker, by way of Damages, the sum of 1500 l. to be ledied upon his Lands and Chattels, should be brought to the Bar as a Delinquent, and there receive a Reprehension.

The twelfth of June, 41. The Committee Reports a Complaint of Edward Bagshaw, his Brother Henry, and Sisters Mary and Margaret, against their Brother Thomas, concerning Portions and Annuities given them by their Fathers Will: That all Parties have been heard, and their Witnesses. Upon hearing the State of the Matter, The Lords Order Thomas to put in Security within four dayes for the payment of the Portions according to the Will; And to give security by Land for the paying of an Annuity of 20 l. per annum to Edward for term of his life: That then the

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said Edward shall release by a Fine to
the said Thomas, all his Estate, Right,
Title and Interest in the Lands and Goods
of his Father deceased: And that a Sta-
tute of 1600 l. entred into by the said
Thomas Bagshaw to John Gell Esq;
shall be discharged and made void: And
that Thomas Bagshaw shall make a Re-
lease to the said Edward of all Debts
and Demands.

The sixteenth of June, 41. The Lord
Audley Complains by Petition, That the
Lord Cottington kept from him the
Manner of Fonthill, and prayed Re-
lief therein: upon hearing Counsel on
both sides, the Lords dismissed the Peti-
tion.

The twenty third of June, 41. The
Committee for Petitions, Reports, That
Mistris Walter had preferred a Petition
setting forth, That William Walter her
Husband will not permit her to cohabit
and dwell with him, nor allow to her and
three Children any thing for their sup-
port. The Lords Order her to repair to
her Husband, and offer to live with him,
and if he shall refuse to admit her, that
then

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when he shall allow her 80*l*. per annum,
for her Maintenance, ^{now to himself}
On the 2th of July 1731, A Petition was
exhibited before the Lords by sundry
Officers and Clerks of the Court of Com-
mon Pleas, shewing, That the disposing
of the Offices of Prothonotaries, Phil-
lers, Exigencers, and other Offices of
the said Court, had time out of mind be-
longed to the Chief Justice of that Court
for the time being, but several Grants
and Patents had been obtained from his
Majesty for the disposing of the said
Offices, and therefore they prayed, That
all these Grants, and Letters Patents
might be recalled, The Lords heard Coun-
sel upon it, and after mature deliberation
declared, That the said Offices do of
Right belong to the disposition of the
Lord Chief Justice of the Common Pleas,
And the Grants formerly made by Let-
ters Patents of the said Offices to be Il-
legal, and void, And Ordered the said
Patents to be brought into the House.

There is likewise in the Journal Book
of that Parliament, mention made of a
Petition of one Thomas Smithick, pre-
ferred

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ferred the tenth of June, 1641. Com-
plaining of wrongs sustained from the
East India Company, and likewise of a
Petition from the East India Company,
full of Respect and Submission to the
House of Lords, and praying a longer
day (then it seems was appointed) for
bearing the Merits of the Cause, which
the Lords granted, and Ordered all such
Books, Certificates, and Writings as
were in the Custody of the Company con-
cerning that business, should be produced,
and Smithick to peruse and take Copies
of them. What was more done upon
this Petition of Smithicks, appears
not by the Journal Book, probable
they compounded the business among
themselves. But however it is obser-
vable the different Spirits of the East
India Company then and of this now,
The Modesty of that, and the Carri-
age of this so far differing. In those
times no question was made of the
Power of the Lords in point of their
Judicature, nor no Complaint against
their practice of it. Yet we see the
frequency of it, in Causes of all Na-
tures

tures, Criminal, Civil, Mixt, between King and Subject, between Subject and Subject; no Protection, no Priviledge did exempt any body from their Jurisdiction.

The Lords at the Conference (as they said to the Gentlemen of the House of Commons) were the more Copious in the enumeration of these later Presidents, especially those of 1640, and 1641. not that they thought themselves at all to stand in need of them, the ancient ones before produced shewing the usage all along from the very first and best times, which in their Lordships Opinions were of much more weight, & sufficiently convincing; but the House of Commons having a little before at an other Conference delivered it for a Maxim, *That the later Presidents were best*, and having accordingly insisted upon one single President of the same Parliament of 1640. to Oblidge the House of Lords to commit a person upon a general Impeachment of Treason, without Special Matter shewn

shewn, and supposing that one President to what their Lordships alledged to the contrary, and made appear to have been the usage of all former times; no Record being of any Man ever sent to Prison by the House of Peers without a paticular Crime expressed in the Impeachment of some Act done by him, before the Earl of Strafford, which was the President stood upon. This made the Lords heap up so many Examples of the Proceedings of their House in the Parliament of 1649 in the point of Judicature, to use it, as *Argumentum ad hominem*, and what the House of Commons could no wayes except against themselves having declared it to be of greatest Authority.

Until Henry the Eighth time, the very House of Commons was to be beholding to the House of Lords for their Administration of Justice even concerning their Members; as the only Judges and Conservators of their Liberties and Priviledges. Themselves could not before that have punished

nished any one, that had never so much offended them : So far were they from exercising a Power of Commitment, or of inflicting any punishment for Crimes at large and against the Laws of the Land, where neither the Offence nor the Offender had particular relation to their House, as in these later times hath been often practised by them. But (as I say) the first time that ever they punished any, (and it was for breach of Priviledge) was in the Parliament 34 H.8. in the Case of George Ferrers, Burgess for *Plimouth*, who was arrested and put in the Counter ; The House informed of it, sent their Serjeant to demand their Member (not so much as to summon Sheriff, or Bayliff that made the Arrest, or Party at whose suit it was made, and less to bring any of them as Delinquents to the Bar, as now a dayes) nor could they obtain that ; But their Serjeant coming to the Counter, found resistance, the top of his Mace was broken off, his Man knocked down, and he glad to get off without the Prisoner : So back he comes to the House yet

sitting, and makes his Complaint: They presently all rise with their Speaker, come up to the House of Lords, and the Speaker makes the Complaint to Sir Thomas Audley Lord Chancellor sitting on the Wooll-sack. The Lords judge the Contempt to be very great, and refer the punishment of it to the Order of the House of Commons. Then indeed they return to their House, and send for the Sheriff of London, the Clerks of the Counter, all the Officers there that had a part in the fray with their Serjeant, one White at whose Suite Ferrers was Arrested, and the Bayliffs that did Arrest him, all to appear personally before them at eight of the Clock next Morning: and when they came, they sent some of them to the Tower, some to Newgate, where they continued till they were delivered at the suite of the Lord Major.

We do not find that before this the House of Commons committed any body, no not for the Breach of their Priviledges: nor were themselves so much as Judges of the Elections of their Members, but were fain to come

up to the Lords, and pray their aid to redress what was amiss; and punish those that had offended: All the Presidents shew it so to have been, and not one, no not one to the contrary.

5. H. 4. n. 74. *The Commons Petition, That all such Persons as shall Arrest any Knight or Burges of the Commons, or any of their Servants, and know them so to be, do Fine at the Kings Will, and render treble Damages to the Party grieved. The Answer is, There is sufficient remedy for the Cause; Which remedy it seems was, That the King and Lords would set them at Liberty, which was as they conceived sufficient. For,*

8. H. 6. n. 57. *Among the Petitions of the Commons, one is, That William Lake Servant to William Mildred Burges for London, was Arrested and carried to the Fleet upon an Execution, and they pray he may be delivered according to the Priviledge of their House, It is granted, but withal, Authority is given to the Chancellor, to commissionate Persons to apprehend him again after the Parliament.*

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39. H. 6. n. 9. *The Commons complain by Petition to the King and Lords, That Walter Clerck one of their Members, Burgeſs for Chippenham in Wilts, had been Outlawed, and put in Priſon, and pray, That by the Aſſent of the King and Lords he may be releaſed; Which was granted, and their Member ſet at Liberty.*

14. E. 4. n. 55. *The Commons among their Petitions bring up one of a Member of theirs William Hide Burgeſs likewise for Chippenham, being taken in Execution for Debt, and a Priſoner in the Kings Bench, praying he may be delivered by a Writ of Priviledge out of the Chancery, the which is granted, with this ſaving, That his Creditors may renew their Execution after the Parliament.*

17. E. 4. n. 36. *At the Petition alſo of the Commons, the King with the Aſſent of the Lords Spiritual and Temporal grants, That John at Will Burgeſs for Exceter condemned in the Exchequer during the Parliament upon eight ſeveral Informations, at the Sute of John Taylor*

Taylor of the same Town, shall have as many Superfedeas therefore as he will, until his coming home after the Parliament.

One memorable Case of this Nature must not be omitted, which happened 31. H. 6. n. 25, 26. &c. Thomas Thorp Chief Baron was Speaker of the House of Commons, and in an Interval of Parliament) the Parliament being upon a Prorogation,) he had been Arrested, and carried to Prison at the Duke of York's Suite, who had got a Judgement against him in the Exchequer upon an Action of Trespass, for carrying away the Dukes Goods from Durham-House; The Parliament meeting, the House of Commons send up some of their Members to make Complaint to the King and Lords, That their Speaker was a Prisoner, and desire his Release. The Duke of York gives the Lords an account of the business. They ask the Judges Opinion in the Point; The Judges Answer was in these words, It hath not been used before time, nor becomes it us, to determine matters concerning the High Court
of

of Parliament, which is so high and mighty in its Nature, that it is Judge of the Law, and makes that to be Law, which is not Law, and that to be no Law, which is; And the Determination of its Priviledges belongs to the Lords in Parliament, and not to Justices: But to declare the Use in Lower Courts, they said, That as Writs of Superfedens of Priviledge of Parliament were brought unto them concerning any particular Member of Parliament, who had been Arrested, so it were not for Treason, Felony, Surety of the Peace, or for a Condemnation before Parliament, they did alwayes release him, that he might freely attend the Parliament: After which Answer made, It was by the Lords Spiritual and Temporal agreed, assented and concluded, That the said Thorp should remain in Prison notwithstanding his being Speaker of the House of Commons, or any other Priviledge of Parliament. And they Ordered the same to be declared unto them, that were come from the Commons by Walter Moyle a Serjeant at Law, because it was Matter of Law: but in the
pre-

presence of the Bishop of Ely, and many other Lords; And then the Bishop of Ely was to charge them in the Kings Name to chuse an other Speaker: This was accordingly performed: And the House of Commons did chuse an other Speaker (Sir Thomas Charleton) in the place of Thomas Thorp, and sent some Members to acquaint the Lords with it; and the Lord Chancellor answered, The King likes him well; It is to be noted, That the King lay then sick at Windsor, and yet all is done in the Kings Name, as if he had been present.

These Presidents shew, That the House of Commons did not in those times exercise any Jurisdiction, nor themselves lay any punishment upon those that broke their Priviledges, and that the Sheriffs and Bayliffs of London in that Parliament of 34. H. 8. were the first, who felt any effects of their Justice in that kind. Nor after that, did they constantly put that Power in Execution, and for some time it seems they absolutely waved it;

it; For the very next year, the 35th of H. 8. One Trewinnard a Burgess for Cornwall had been imprisoned at the suite of one Skewis, and was delivered onely by a Writ of Priviledge, (But Skewis not sent for by the Serjeant at Arms to be committed and punished by the House, as the use is now) So far from that, That the Executors of Skewis in the Trinity term of the 36th of H. 8. brought their Action of Debt against Chamond the Sheriff of Cornwall for the Escape, but were cast in their Sute, and the Priviledge allowed, as Dyer mentions it in his Reports, p. 59. And in the 18th of Queen Elizabeth, a Ser-vant of one Mr. Hall a Member of the House being Arrested upon Complaint made to the House, it was referred to a Committee to consider of the Business, and how he should be released, who made their Report, That it could be only by a Writ of Priviledge, as appears by the Journal of that Parliament.

And there is some reason to believe, That they never or very rarely sent for by their Serjeant, or medled with the
the

the Persons of such as broke their Priviledges by arresting or misusing their Servants and Attendants, till 43. Eliz. For I find in a Journal of that Parliament (which I have by me) That a Complaint being made to the House, How a Servant of one Mr. Cooke, a Member of the House, was arrested, that President was urged of the 34th of H. 8. And it was said, that the House had committed the Sheriffs of London and the Bayliffs, for abusing their Serjeant, and for arresting of Ferrers: Whereupon it was then resolved and ordered, That the Serjeant attending the House should go to Newgate, and bring away both the Prisoner and his Keeper: and likewise command the Bayliff who made the Arrest, and the Person at whose suit it was made, to appear before the House. This was done, the Prisoner discharged, and the Bayliff, and he who procured the Arrest, brought to the Bar, and upon their humble submission pardoned, with a check from the Speaker, and paying their Fees. Three Presidents only there are, which Sir Edward Cooke produces, of their

exercising a Judicature, two of them upon their own Members for Miscarriages, & the third upon one no Member for striking a Member, this *primo Marie*, the other 8. *Eliz.* & 23. But they did not constantly nor frequently do that neither, that is, not judge and punish either their own Members for any Offence, whether against the House or out of the House, or any other for arresting or assaulting them, till after Queen *Elizabeths* time. For in the 27th of her Reign, as appears by the Journal of that Parliament, *A Member of the House having been served with a Sub-pœna, the House sent to the Lord Keeper, and signified unto him, That it was against their Priviledge. The Lord Keeper returned answer, That he should not submit to any Opinion of the House concerning their Priviledges, except those Priviledges were allowed in Chancery, and would not recal the Sub-pœna.*

So in Matters of Elections, they were glad to pray the aid of the House of Peers upon any Miscarriage or Neg-

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Neglect of the Sheriffs; as in the 18th H. 6. n. 18. The Sheriff of Cambridgeshire (Gilbert Hore) had made no return of the Knights for the County: upon Complaint made to the House of Peers, it was Ordered, That he should go to a New Election, and make Proclamation, That no Person should come armed thereunto.

Any of the Members to be dispensed of their Attendance in the House, come to the King and Lords for it. So did Sir Philip Courtney Knight for Devonshire 16. R. 2. n. 6. who being accused of some bainous Matter, comes to the King in Parliament, (for the King did then ordinarily sit in Person in the House of Peers) and prays to be discharged his Attendance, until he was purged, which was granted: This was upon the Wednesday, and the Monday after at the Request of the Commons, he is restored to his place in their House, and to his good Name, for that he had submitted himself to reasonable Arbitrement, saith the Record.

All this is said with great Respect to

the House of Commons, and not any wayes to impugn or question their exercise of Jurisdiction upon their Members; and for the defence of their Priviledges, but only to shew how things were in the beginning, and how extensive the Power of the House of Peers hath ever been in their Judicature, reaching all Crimes, all Persons, all Places, none exempt: And how necessary it is, it should be so, That there be not a failer of Justice in the Land; that no Offender may escape unpunished, and no oppressed Person go unrelieved; All other Courts having their Bounds and Limits, which make them too narrow for some Cases: And this trust being in the House of Peers, there is remedy in those extraordinary Cases.

But before I wind up all to a Conclusion, a word must be said to answer some Objections, which I have met with in a Book intituled the *Commoners Liberty*, printed in the year 1648. The first Objection is an Order of the House of Peers with the Kings Assent

to it 4. E. 3. n. 6. by which the King and Lords declare an Agreement made betwixt them, That the Lords shall not be held nor charged to give Judgment on others but their Peers; And that the Judgements then given shall not be drawn into Consequence, to oblige the Peers in time to come, to judge other then their Peers against the Law of the Land: This the Author of the Book will have to be an Act of Parliament, because it is said to be done in full Parliament: To which I answer, The Record it self shews it to be otherwise, The Title is, *Concordia ne trabatur in Consequentiam*; That is, an Agreement an Accord between Parties, that what is done shall not be drawn into Consequence, no Law to impose upon them, and to oblige them; And the expression, That it was done in full Parliament, and so the Commons present; signifies nothing, as to inforce what he would infer upon it. For admit that, yet it makes it not a Law, the Commons might be Witnesses to what was done,

but

but were no Parties ; Which must have been to make it a Law. They must either have Petitioned for it before, or have given their Assent and Approbation after ; it must either have begun or ended in their House, before it had gone to the King for his Royal Assent, and then it had been binding and the Law of the Land ; but there was no such thing here. The Occasion of it was this, The King had prevailed with the Lords, against their Wills and Protestations to the contrary, as appears by the Record of that Parliament, n. 2. even in a Manner forced them, to condemn the Earl of March, Sir Simon de Beresford, John Matrevers, Bogo de Bayons, John Devaral, Thomas de Gourney, and William of Ogle, for the murder of Edward the Second, and the death of the Earl of Kent, all of them Commoners, except the Earl of March, and none of them called to answer, yet some of them in hold, and others not ; Those that were in hold were presently executed, and great rewards promised to
who

who should bring in the rest, quick or dead. The Lords afterwards troubled in Conscience at what they had done, and moved with just indignation against themselves, made first a Protestation, *That they would not for the future be Tenus & Chargez a rendre Jugement sur autre que sur leurs Pairs, be tyed and charged to judge any but their Peers*; and this they get the King to consent unto, and happily for the more Solemnity of the business, would have the King declare so much before the Commons; And their Indignation, together with their Precaution not to be again necessitated to do the like, might carry them further to say, They would not be obliged to judge any but Peers against the Law of the Land; though it will very well bear an other Construction, that it was their being in that Manner forced and pressed to do, what otherwise they would not have done, which they declared to be against the Law of the Land, because it is against the Freedom of Parliaments; and not their Judging of Com-

Commoners to be against the Law of the Land. But admit it, those Lords then thought it to be so, and that they ought not to judge any but their Peers: Doth that bind up the House of Peers, that they may never be of another mind? They are still Masters of their own Orders, and alter them and change them as they think good, And I look upon this Order, as no other, nor of no more force, then that made 8. E. 1. which is in the Appendix to the *Placita Parliamentaria*, p. 442. concerning Petitions, which I have mentioned before, and which succeeding Parliaments would not observe. And that they did not observe this neither, of their not Judging Commoners, is apparently proved by the constant practice of the House of Peers in all succeeding times. And one thing more would be taken notice of in the Proceedings of the House of Peers at that time, after their precipitate and Illegal Condemnation of those Persons, without ever calling them to answer: *The Earl of March*

a Peer of the Realm, was condemned and executed as well as the Commoners, and this was looked upon as a President of ill Consequence for the Peerage, and therefore they would have a Law to prevent it, and *that the Nobles of the Land should not be put to answer but in open Parliament by their Peers*, which they long endeavoured before they could obtain it: So as in 15. Ed. 3. n. 6. they adjourned the Parliament severall dayes upon that point, and at last appointed four Earls, four Bishops, four Barons to draw it up into form, and got it passed into an Act; but two years after the King got that Act to be repealed: And so far they likewise took care of Commoners in that Parliament of 15. Ed. 3. as to have it enacted also, *That no man should be impeached by Commandment, without process of Law.* These were Acts of Parliament and Laws which did bind, but the other of their judging none but Peers was a meer particular Order of the House, an Agreement betwixt the King & them, which

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was

was no wayes binding to posterity, and alterable still at pleasure by the same House that made it.

Another Battery raised by that Author against the Jurisdiction of the House of Peers, is from the Statute of Appeals 1 H. 4. c. 14. And with that he would overthrow the force of that President of *John Hall*, condemned by the Lords in that first year of H. 4. for the death of the Duke of *Glocester* in the 21 of R. 2. as if that power were now taken from them by that Act, and that the Commons by it had taken care, it should not be so done by them any more, for so he saith p. 23. Which by his leave concerns nothing the proceedings against *Hall*, and will less (I may say) concern the present question of the proceedings of this House of Lords in the Case of *Skinner*: For that Statute provides only for Tryall of Appeals, where a private person next of kin is or shall be prosecutor, which was not in *Hall's* Case, the prosecution being in the ordinary way at the Kings suit: It is true, that in the

21 of R. 2. an horrible abuse had been in point of Appeals: Certain Lords, not by Law capable of it, taking upon them to be Appellants, and in their own Names accusing in Parliament several persons, Peers of the Realm and Commoners, of divers Treasons and Murthers, making themselves Judges and Parties, and condemning them to die, without, nay against, all forms of Law, &c rules of Justice, by w^{ch} means many innocent men lost both lives and Estates. This it is that is provided for by that Statute, and care taken it shall be so no more; not the Ordinary prosecution of Offenders in the Kings Name, as *Halls* was; Though one particular in that Tryal is confessed to have been most Irregular and Illegal, which was examining him against himself upon Oath, but that is not material to the point in question, which is, Whether the Statute of Appeals forbids such Tryals, as assuredly it doth not, nor any of those formerly instanced in to have past in the House of Peers. And least of all can

it concern the late Proceedings in the business of *Skinner* and the East India Company, in which there is no charge either of Treason or Felony, where an Appeal onely can take place, to bring it within that Statute.

In the same 23^d page, another Argument is used against this Jurisdiction of the Peers, in which that Author hath certainly missed his Mark, for nothing could be produced, that makes more for that Jurisdiction: He saith That the Subject of *England* hath moderated Parliaments, and by expresse words determined, *that some things cannot be done in Parliament, as that any should be impeached there of that concerns his Francktenement or Hereditament*, and vouches for his Authority, *Rot. Parl. 10. H. 6. c. 35.* where indeed there is such a desire of the House of Commons, *That none shall be compelled to answer in Parliament concerning his Francktenement*: But let him tell us, how they sped with their desire, if their Petition was granted, to make it a Law and binding: Far from

it: The Answer is, *Le Roy s'advisera*,
The King will advise, which in Parlia-
mentary Language is a flat Denyal;
So then no alteration was made of
what was formerly the Usage and
Power of Parliament, but all conti-
nued as it was before. And that be-
fore they did in Parliament try and
judge such matters, is apparent by the
desire of the Commons, that it should
not be so hereafter; for if no such
thing was, their desire it should be no
more so, was ridiculous; but it was so
it seems; and their desire that it should
be altered being rejected, leaves it in
the same state it was, that the Parlia-
ment might continue still to do it;

And by the Parliament in these
Cases is to be understood onely the
House of Peers, for there singly lies
the Judicial Power, as is confessed and
acknowledged by the House of Com-
mons themselves, 1. H. 4. n. 79. (so it
is in the Record, but in the Exact A-
bridgment it is n. 80.) *That all Judg-*
ments appertain to the King and Lords,
and nat to them, but when out of
especial

p. 143.

*especial grace some are communicated
 unto them, and therefore they there de-
 site, that the Records may be so entred,
 as they may not be made Parties to them;
 So careful they were then not to seem
 to encroach upon that Power. And
 whereas the Author of that Pamphlet
 would make a difference upon the
 Personal presence of the King in those
 times in the House of Lords, That
 though they might do it then in some
 Cases, it followed not, the Lords might
 do it alone the King not there, it is but
 a fancy of his, making a difference,
 where in truth there is none. I have
 proved it before, that the Court is the
 same, be the King present or absent;
 The King in Person can judge no
 man, nor dispose of no mans Life or
 Estate, therefore it is a Maxim, That
 the King can do no wrong; the rea-
 son is, because he of himself and by
 his own particular and personal Au-
 thority can give away no mans Right,
 no nor any ones pretended Right,
 where a man hath only a possession,
 though without right, the King a-
 lone*

none in propria Persona can give no Rule in it, but it must be tryed in one of his Courts; And his Judges and Ministers (whom he intrusts with his Regal Power, that with which he is himself invested in his Politick Capacity, and which he conveys to them, making them thereby the Dispensers of his Royal Justice unto all his Subjects,) they must be the Persons that do the wrong, if any be done, It is *Curia Regis* that doth it, and not the King, though he sit in Court in Person; And so the stile is *Videtur Curia*; And the Pleas Commonly end with this Declaration of the Party, *Hæc præstatum sum Verificare præ ut Curia ordinaverit*; and when mention is of any thing done contrary to the formes of proceeding, *Non sic in Curia ista constitutum est*, is the expression; as it is in the President of the 18. E. 1. so much insisted upon by the House of Commons. So hath it been in all times the Authority of the Court, to which the Law requires obedience; When Henry the third would have his Brother
Richard

Richard Duke of Cornwall confirm the grant of a Mannor to one *Waleran a German* (to whom King *John* had given it, and which the Duke of *Cornwall* said belonged to his Dutchy of *Cornwall*, and had therefore taken possession of it) his Answer was, *That he was willing Curia Regia subire Judicium & Magnatum Regni*, that was to say, the Judgment of his Peers in Parliament: and when the King said angrily to him, He should then quit the Kingdom, if he would not deliver up the Mannor; his reply (as *Matthew Paris* Records it) was, *Quod nec Walerano Jus suum redderet, nec sine Judicio Parium suorum e Regno exiret*: He would neither quit his Right nor the Kingdom, but by the Judgment of his Peers: Such difference was then made betwixt the Kings Personal Command, and an Order of the House of Peers in disposing of mens Rights, which makes it very apparent, That the Kings Personal presence could not add any thing to, or make any alteration in, the Jurisdiction of
any

any Court. But enough of this; especially considering what is said before upon the same Subject.

Some other Evasions I find in that Book to elude the Lords Judicature, and take off the force of some Presidents which have been cited in maintenance of it, which I think are but evasions, and work no great effect. As that of the Banishment of *Alice Perrers* or *Pierce*, which that Author will prove to have risen from the Commons, and to have been at their Petition; because *Walsingham* a Cloistered Monk saith so, contrary to the Record in the Tower, where he finds no such thing, where certainly it would not have been omitted, had it been so, that being so essential a part of a Transaction of Parliament, that it could not have been left out by the Clerk in the Journal Book; And whereas to fortifie *Walsingham's* Testimony, he saith he then lived, as if he had been *Testis Ocularis*, I doubt much if he was then born, or so young he must have been, that he could little take

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notice of the passages of the time, for *Balaus* in his Book *De Scriptoribus Britanicis*, saith he flourished in the year 1440. under *Henry* the sixth; when he died we know not, but had he died then, or soon after, he must have been sixty three years old, if so be he was in the World when *Alice Pierce* was banished; for the Judgement of *Alice Pierce* was the first year of *Richard* the second, which was in 1377. So as what he writes could be but by hearsay. Which is observed by me, onely to shew what weak proofs that Author brings to make good his Assertions, and shews the badness of his Cause; Not that I think it at all material to the point in question, whether or no it was at the request of the Commons, that *Alice Pierce* was judged by the Lords, which would not at all evince what he would infer upon it, that the House of Lords hath not of it self Cognisance of the Cause of a Commoner, nor can judge him for an Offence, whether Capital or of a lesser Nature, but that the House of

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Commons, making it their desire, qualifies them for it: Which is a strong Argument of the contrary, and proves that the House of Commons doth thereby acknowledge their Judicature: For ridiculous it were to think, That any Act of that House could create a new Power in the House of Lords, which it had not in it self before, and which afterwards must cease, till it please the House of Commons to give again a new life and being to it: As if the House of Lords were but a Property, which cannot move of it self, to have the Verse said of it, *Ducitur ut nervis alienis mobile lignum.* I am sure it hath not been so heretofore, nor do I think the House of Commons will own that Authors Opinion. And so the Judgment of *Hall* for the death of the Duke of *Glocester*, that too forsooth must be at the request of the Commons, and so be an Act of Parliament, and the proof for it is, that at the end of the Roll they thank the King for his just Judgment. But if the Gentleman would have perused

the whole Roll, he would easily have been satisfied, that the thanks of the Commons related not to *Halls* condemnation, but to the proceedings of the King and House of Peers against *Sir William le Scroop, Sir Henry Green, and Sir John Buffe*, who had been active for *Richard* the second, and were looked upon as principal Authors of the Miscarriage of his Reign: For at the request of the Commons, the Lords confirmed a Judgment formerly given against them in some of the Kings Courts, (not in Parliament) and the King declaring, That though he took the forfeiture of their Estates according to the Sentence given upon them, yet he understood not, there should be by it any Infringement of the Statute, which said, *That no mans Estate should be forfeited after his death, who had not been convicted whilst living*, for these persons he said had been so convicted; Whereupon the Commons thanked the King for his righteous Judgment, and thanked God for giving them such a King: This had no rela-

placita Coronæ.
1 Hen. 4: n. 17.

relation at all to the business of *Hall*; And in the Record it is an Article by it self of what had passed in Parliament another day. So for the proceeding against *Gomenix* and *Weston*, that too must be at the request of the Commons, and consequently an Act of Parliament; Whereas the Commons had onely in general desired, that all such as had delivered up any of the Kings Forts and Castles unduely, might be called to account for it in that Parliament, and be punished for it according to their demerit by the Judgment of the Lords, who thereupon commanded the Lievtenant of the Tower to bring before them those two, who were already in hold for their several Facts in that kind, whom they tryed and condemned, and proceeded likewise against several others, as *Cressingham*, *Spikesworth*, *Trevit*, and many more guilty of the same Crime, whom they convented before them; and Sentenced, some to death, some to other punishments according to the Quality of their Offence: Now,

I do ask if in common sence it can be construed, that the Commons were at all Parties in the prosecution of these several Offenders: But admit, they had particularly impeached every one of them (which is more, then to desire such a Delinquent may be brought to his Tryal, and that the Lords would do Justice on him as they find Cause, and much more, then onely to design the Crime, and leave it to the Lords to find out the Persons; For in an Impeachment they examine the matter, and first find themselves the Party to be guilty, and then they follow it against him, and prove him so, before the Lords) Doth this at all give them any part in the Judgment? or must it not necessarily be understood, that the Judicature is naturally and constantly lodged with the Lords, and the House of Commons part then is onely to bring the Offender before the Lords to be tryed? This very Record of the Proceedings in the Lords House against *Gomenix* and *Weston* shews it so to be, and proves the Judicature of

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the House of Peers as strongly as can be. It runs thus, *Item par la ou supplié est par les Communes, que tous ceux qui ont rendus & perdus Chatels ou Villes par dela par uray defaut des Capitaines, puissent estre a Responce a Cest Parlement & selon leur desert fortement punis par agard des Seigneurs & Baronage, eschievant le malueis ensample qils ont donnez as autres qui sont Gardeins de villes & Chatels, Commandé est a Sire Alein de Buxhall Conestable del Tour de Londres qe y face venir deuant les Seigneurs en Parlement a Westminster le Vendredy 27 Jour de Novembre l'an susdit Jehan sire de Gomenix & William de Weston, &c.* Item, *Whereas it is prayed by the Commons that all those, who have delivered up and lost Castles and Towns on the other side of the Sea by their own default, being Captains of them, may be put to their answer at this Parliament, and according to their desert be severely punished by the award of the Lords and Baronage, for the eschewing of the evil example, which they have given to other Guardians of Towns and Castles;*
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Command is given to Sir Allen de Buxhall Constable of the Tower of London, to bring before the Lords in Parliament, at Westminster, upon Friday the 27th of November of the aforesaid year, John Lord of Gomeniz, and William of Weston, &c. Here the Commons desire that all such may be severely punished by the award of the Lords and Baronage; So it is their Award and their Judgment must punish, and this by the Commons confession; And you may observe further, that the Commons do not make any mention of any particular Person, but the Lords they command Sir *Allein de Buxhall* to bring *Gomeniz* and *Weston* before them such a day; But it is easie to trace the Author of the Pamphlet, where he was led out of the way, and that was by an other Pamphlet of the Priviledges of the Baronage, which goes under Mr. *Seldens* Name, but hath as many mistakes in it as leaves, and there indeed it is said p. 15. That at the supplication of the Commons, that all those who have rendred Castles, be
put

put to their Answer, and that *Allen Bushall*, Constable of the Tower, do bring before the Lords such a day, *Gemeniz* and *Weston*, to answer the Articles which there shall be preferred for the said Cause, they were so brought, &c. But the Record it self you see is otherwise, which that Pamphleter it seems never read. And for what he further would infer, to make that and all other Judgements at the prosecution of the Commons (admit they had been so, which these were not) Acts of Parliament, is a Fancy so ridiculous, as it is not worth the answering, which makes no difference betwixt an Act of Attainder, that passeth both Houses, and afterwards hath the Kings Assent, (as all other Laws have, which is an effect of the Legislative Power, in which either House hath an equal Vote) and a proceeding before the Lords against a Criminous Person in a Judicial way, wherein the Commons have nothing to do, as to the judging of him.

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But

But one thing more in that Pamphlet
 let I cannot let pass, which is in p. 12.
 The words are these, viz. For the
 Kings giving Judgment in Parliament
 with the Lords Assent, I do confess
 Judgements there ought to be pro-
 perly and punctually entred, as given
 Par nostre Seigneur le Roy que est Sou-
 verain Juge en tous Cas, & par les Sei-
 gneurs Spirituels & Temporels ou l'Assen-
 des Communes de la Terre, ou a leur Pe-
 tition, & Nenny par les Seigneurs Tem-
 porals Seulement: That is, As given
 by our Lord the King, who is Sovereign
 Judge in all Causes, and by the Lords
 Spiritual and Temporal, with the assent
 of the Commons of the Land, or upon their
 Petition, and not by the Lords Temporal
 alone. And for this he quotes in the
 Margent, Rot. Pari. apud Leicester, ii.
 16. which he delivers so Magisterially,
 as any man would swear he had good
 Authority for what he said, and that
 his old French was some old Oracle of
 Parliament: And I must confess upon
 the first reading of this I was at a stand,
 finding here such a positive Precept,

contrary

contrary to what I had still believed, both in the Affirmative (*it must be by the Kings and Lords, with the Assent of the Commons*) and Negative (*not by the Lords alone.*) But when I came to examine this Assertion by the Record, I found there was a foul mistake, whether purposely or ignorantly I judge not: For what was delivered by Counsel, to bolster up his Clients pretensions, is there produced, as the Rule of the Court; And an Error assigned to reverse a former Judgment, which is but the Allegation of a Lawyer, that draws up his Clients Plea, is made an Argument to controul and condemn a constant usage of the House of Peers. It was in the Case of the Earl of Salisbury, Who brought a Writ of Error in the Parliament 2. H. 5. to reverse the Judgment given 2. H. 4. n. 30. by the Lords Temporal alone with the Kings Assent, by which Judgment the Earls of Kent, Huntingdon and Salisbury, and some others, who had been some stain, some taken in actual Rebellion by other the Kings Subjects, and by them put to

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212 *The Jurisdiction of the*
death without form of Law, were declar-
ed attainted of Treason, and their E-
states forfeited: For the reverſal where-
of Thomas the Son Earl of Salisbury,
amongſt the Errors aſſigns this for one,
as a principal one, that it was given by
the Lords Temporal alone with the King,
whereas it ſhould have been by the King,
Lords Spiritual and Temporal, with the
Aſſent of the Commons, or at their Peti-
tions: And what follows upon this? In-
deed if the Judgment had been rever-
ſed, though perhaps upon ſome other
Error, (for ſeveral others were aſſign-
ed) there might have been ſome co-
lour for the Gentlemans Aſſertion,
and the Inference he would make up-
on it: But ſo far from it, that the Judg-
ment formerly given by the Lords
Temporal alone, with the Kings Aſ-
ſent, is fully ratified and confirmed:
Which is as ſtrong an Argument to
evince and prove the Right of Judi-
cature lodged in that Houſe as is poſ-
ſible.

And ſo I ſhall leave that Pamphle
ter, and now conclude, only adding
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this as mine own sense and wish concerning the Lords exercising this Jurisdiction, and in truth what hath been my Observation of their Lordships own Intention and Resolution, which themselves have still declared and practised in their execution of it; which is this.

First, That though they have an undoubted Right to such an universal unlimited Power; of taking cognisance of all Manner of Causes of what nature soever, and of the Judging and Determining them, if no particular Law do otherwise dispose of those Cases.

Secondly, That their Ancestors have so exercised this Power in all times Ancient and Modern, which conveys down that Right to them, according to the Maxim, *usue & Consuetudo est Lex Parliamenti*, what hath been alwayes used by Parliaments is the Law of Parliaments.

Thirdly,

Thirdly: That this House of Lords hath ever been careful not to entertain any businels, which was determinable in Inferiour Courts, so as charged with doing it, they may well take up the Plaintiffs complaint, and say, They have laid to our charge things that we knew not, and would have us restore what we took not away: Though if the Lords had now taken upon them to exercise such an universal Power of Judicature, they had meddled but with their own, that which belongs to them, and had done no man wrong, had given no just cause of complaint, they had but troden in their Ancestors steps, continued that in the House of Peers, which it hath ever been possessed of. And would it not be a shame for them to leave their Posterity in a lower and more curtailed condition than their Predecessors left them, to give up a Right and a Priviledge of theirs, which (as hath been shewed) is so necessary to the Publick Justice of the Kingdom? But they have not done that, which is said of them; And
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there is no colour for any complaint. Why then quarrel with them? Why at this time stir a question which lay a sleep; and for ought we know had never awaked, nor had else ever been stirred? Is this a time to divide, to cause needless differences? Were it not more desirable, nay more necessary to reconcile affections, to unite endeavours, and to conjoin the Counsels, and Power, and Authority of the two Houses of Parliament, for composing the differences which already are, rather than to create new, (and especially when no cause is given for it? For it may be truly said, Here is not *Causa litigandi*, if there be not *Animus litigandi*. Let it be calmly and coolly considered, what the Lords have done, if they have given any cause of difference, if this Apple of Dissention grew with them, which hath been maliciously cast in by some of the East India Company, and too readily taken up by those whom they had surprised and abused by misinformations. Their Lordships have now only

only done Right to a poor man, that was oppressed to ruine by potent Adversaries, who had done the wrong in a Forreign Countrey, and so were no wayes punishable for it here in the ordinary Course of Law, nor the poor man any wayes relievable, (for no part of his Case, as hath been shewed, was within the Compass of the Common Law: Their new devise of a Fiction, which is in truth meerly a Fiction, in the whole of it, without any real foundation in Law, Reason, or good Conscience as being grounded upon a falshood, and yet this Fiction (I say) such as it is, not applicable to Trespasses) so as here had been an absolute Failure of Justice, if the Lords had not undertaken it: And they undertaking it also, not of themselves, as making it their own Act, but upon the Kings earnest Recommendation, when his Majesty and Counsel had in vain spent some years in endeavouring to persuade those severe Adversaries of this poor man, to make him some reasonable Reparation, and they would not.

Fourthly,

Fourthly, And notwithstanding all this, that their Lordships should be quarrell'd with, decried, misrepresented by Offenders, whom they had before them; and that, even before they had determin'd any thing concerning them: yet the Petition of those Offenders full of Falsities, not onely to be received, which (under Correction, and with great respect be it spoken of them who did receive it) was a Manifest Breach of Priviledge, but to be believed, and Votes to be pass'd thereupon, *That the Lords had done that, which was not agreeable to Law, and which tended to deprive the Subject of the benefit of the Law.*

Fifthly, Though these things might well provoke their Lordships to vindicate themselves, not only by asserting their Right to so great and extensive a Power, (which they have done upon good grounds, and with evincing Arguments) but even employing and exercising it in its full latitude; And the same Maxim would justify them in
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their so doing, which the Poet brought to justifie *Cesar* in his vast undertakings, when the Senate by denying him his just demands, gave him the occasion and the boldness to make himself Master of all, take that which was denied him and all the rest, which happily he had else never attempted, the Maxim is, *Omnia dat qui justa negat*: So quarrelling with the Lords now upon so unjust a ground, and denying them such an apparent Right as they had to give Relief to *Skinner*, would plead their excuse to all the World, if they should extend their Power as far, as their Ancestors ever did.

But we will hope better things from them, and that (as the Apostle saith) *their Moderation shall appear to all men*, and that no ill usage will make them depart from their resolution of not interposing their Power, where the Law can give a remedy, nor entertaining any Cause, which is properly determinable in Inferior Courts, For that

that certainly, however it might be Lawful, would not be expedient, and good men will onely do that which is expedient, as being that which is most acceptable to God, and most beneficial to men, which Parliaments will I hope ever do, It shall be my Prayer they may, to which I am sure all good people will say Amen.

FINIS.
